

Historic, archived document

Do not assume content reflects current scientific knowledge, policies, or practices.

PLANT VARIETY PROTECTION

HEARING
BEFORE THE
SUBCOMMITTEE ON
DEPARTMENTAL OPERATIONS
OF THE
COMMITTEE ON AGRICULTURE
HOUSE OF REPRESENTATIVES
NINETY-FIRST CONGRESS
SECOND SESSION
ON
H.R. 13424, H.R. 13631, H.R. 13658, H.R. 13901,
H.R. 14332, and H.R. 15226

JUNE 10, 1970

Serial BB

Printed for the use of the Committee on Agriculture



U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1970

COMMITTEE ON AGRICULTURE

W. R. POAGE, Texas, *Chairman*

JOHN L. McMILLAN, South Carolina,
Vice Chairman
THOMAS G. ABERNETHY, Mississippi
WATKINS M. ABBITT, Virginia
FRANK A. STUBBLEFIELD, Kentucky
GRAHAM PURCELL, Texas
MASTON O'NEAL, Georgia
THOMAS S. FOLEY, Washington
ELIGIO DE LA GARZA, Texas
JOSEPH P. VIGORITO, Pennsylvania
WALTER B. JONES, North Carolina
G. V. MONTGOMERY, Mississippi
B. F. SISK, California
BILL ALEXANDER, Arkansas
BILL D. BURLISON, Missouri
ALLARD K. LOWENSTEIN, New York
JOHN R. RARICK, Louisiana
ED JONES, Tennessee
JOHN MELCHER, Montana

PAGE BELCHER, Oklahoma,
Ranking Minority Member
CHARLES M. TEAGUE, California
MRS. CATHERINE MAY, Washington
WILLIAM C. WAMPLER, Virginia
GEORGE A. GOODLING, Pennsylvania
CLARENCE E. MILLER, Ohio
ROBERT B. MATHIAS, California
WILEY MAYNE, Iowa
JOHN M. ZWACH, Minnesota
THOMAS S. KLEPPE, North Dakota
ROBERT D. PRICE, Texas
JOHN TMYERS, Indiana
KEITH G. SEBELIUS, Kansas
MARTIN B. McKNEALLY, New York
WILMER D. MIZELL, North Carolina

JORGE L. CORDOVA, Puerto Rico
Resident Commissioner

Mrs. CHRISTINE S. GALLAGHER, *Chief Clerk*
LACEY C. SHARP, *General Counsel*
HYDE H. MURRAY, *Associate Counsel*
L. T. EASLEY, *Staff Consultant*

SUBCOMMITTEE ON DEPARTMENTAL OPERATIONS

ELIGIO DE LA GARZA, Texas, *Chairman*

THOMAS G. ABERNETHY, Mississippi
WATKINS M. ABBITT, Virginia
GRAHAM PURCELL, Texas

THOMAS S. KLEPPE, North Dakota
ROBERT B. MATHIAS, California
KEITH G. SEBELIUS, Kansas

H.R. 13631, a bill
sexually reproduce
by making protec
them, thereby pro

Statement of:

Babcock, George

Blum, John C

Consumer an

Brown, Clare

Ohio-----

Delta & Pine

Fortmann, Dr

of Agricultu

Horton, Hon.

of New Yo.

House, Thom

Klein, Andre

Loden, Dr. H

Clayton & C

Mahon, Hon.

of Texas---

May, Hon. C

of Washing

McKenna, Ri

Neely, Dr. J.

Purcell, Hon.

of Texas---

Reeve, Eldro

Institute for

Co-----

Reid, Hon. Ch

of Illinois---

Renner, Victor

Rogers, John S

Plant Breede

Scott, Dr. Wal

Smith, J. Rita

Council----

Stark, Paul C.,

Talcott, Hon. J

California---

Walker, George

Washington As

White, Allenb

American Ser

Correspondence sub

Bullard, Edgar

June 10, 197

Campbell, J. F

1970, report

Conlee, Doug,

of June 10,

Klein, Andre

June 16, 197

Husbands, F

Products A

Farm Bureau	Page
-----	61
olina Crop Im-	
-----	61
ucers Coopera-	
-----	63
in Seed Trade	
-----	62
n Florists and	
-----	65

PLANT VARIETY PROTECTION

WEDNESDAY, JUNE 10, 1970

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON DEPARTMENTAL OPERATIONS
OF THE COMMITTEE ON AGRICULTURE,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10 a.m. in room 1302 Longworth House Office Building, Hon. Eligio de la Garza, chairman of the subcommittee, presiding.

Present: Representatives de la Garza, Purcell, Kleppe, Mathias, and Sebelius.

Also present: Mrs. Christine S. Gallagher, chief clerk; Lacey C. Sharp, general counsel; Hyde H. Murray, associate counsel; John A. Knebel, assistant counsel; L. T. Easley, staff consultant; and Fred T. Ward, assistant staff consultant.

Mr. DE LA GARZA. The committee will come to order.

We are considering today H.R. 13631 and related bills.

(See page 67 for text of bill.)

(The departmental report on H.R. 13631 follows:)

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, D.C., June 10, 1970.

Hon. W. R. PoAGE,
*Chairman, Committee on Agriculture,
House of Representatives*

DEAR MR. CHAIRMAN: This is in reply to your request of September 10, 1969, for a report on H.R. 13631, a bill "To encourage the development of novel varieties of sexually reproduced plants and making them available to the public, by making protection available to those who breed, develop, or discover them, thereby promoting progress in the useful art of agriculture."

This Department supports the objective of H.R. 13631.

We believe that it is desirable to provide incentive for private enterprise to undertake the research and development required to produce novel varieties of sexually produced plants. The proposed legislation would provide such incentive.

The Department is not prepared at this time to comment on the specific provisions of H.R. 13631. The Administration has under consideration a number of important changes to the laws protecting proprietary rights in the United States. This review will have implications for programs such as the one proposed here. We wish to reserve further comment on the provisions of H.R. 13631 until we have had an opportunity to evaluate them in the light of the findings of this Administration review.

The Bureau of the Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

J. PHIL CAMPBELL,
Under Secretary.

Mr. DE LA GARZA. We have the chairman of the Appropriations Committee, the distinguished gentleman from Texas, who has to attend a hearing of his committee. So, in deference to his very trying circumstances, and with the permission of the other witnesses, we will now hear from Chairman Mahon.

STATEMENT OF HON. GEORGE H. MAHON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. MAHON. Mr. Chairman, thank you for letting me appear. shall I say, out of order. I think it would be appropriate to place my remarks after the remarks of Mr. Purcell.

I simply wanted to appear here today to evidence strong support of the objectives of H.R. 13631. I realize that your committee will have a hard look at all of the phraseology and provisions, and you may or may not want to make changes, but I am convinced that something along the lines provided for in the bill is necessary, not just in the interest of the producers and developers of seed, but in the general interest of the farmer and the general interest of agriculture.

I have here today with me, Mr. George Babcock of my home town of Lubbock, Tex., and I understand he is scheduled to be one of the witnesses at the proper time.

All I wanted to do was to show interest in this matter and to thank the committee for the hearing which you have provided.

Mr. DE LA GARZA. Thank you very much, Mr. Chairman. We are very happy to have you here, and we will insert your prepared statement after the statement of the author of the bill.

Mr. MAHON. Thank you very much. I do not feel a further statement from me is necessary. The committee will, I am sure, fully explore all the aspects of the proposed legislation.

Mr. DE LA GARZA. We will now hear from the Department of Agriculture.

The witness testifying for the Department will be Mr. John C. Blum, accompanied by Mr. Martin G. Weiss, Mr. Rubin Hoffman, and Mr. Stanley F. Rollin.

We shall be very happy to hear from you, Mr. Blum, or any of your colleagues who wish to testify.

STATEMENT OF JOHN C. BLUM, DEPUTY ADMINISTRATOR FOR REGULATORY PROGRAMS, CONSUMER AND MARKETING SERVICE, U.S. DEPARTMENT OF AGRICULTURE; ACCOMPANIED BY MARTIN G. WEISS, ASSISTANT TO DEPUTY ADMINISTRATOR FOR FARM RESEARCH, AGRICULTURAL RESEARCH SERVICE; RUBIN HOFFMAN, OFFICE OF THE GENERAL COUNSEL; AND STANLEY F. ROLLIN OF THE GRAIN DIVISION, CONSUMER AND MARKETING SERVICE, U.S. DEPARTMENT OF AGRICULTURE

Mr. BLUM. Thank you, Mr. Chairman.

I appreciate the invitation to appear before your committee and present the views of the Department of Agriculture on H.R. 13631. We have submitted an official report on this bill to the chairman of the House Committee on Agriculture.

The bill is designed, in the words of its preamble:

To encourage the development of novel varieties of sexually reproduced plants and making them available to the public, by making protection available to those who breed, develop, or discover them, thereby promoting progress in the useful art of agriculture.

The Department supports this objective of the bill.

We believe that it is desirable to provide incentive for private enterprise to undertake the research and development required to produce novel varieties of sexually produced plants. The proposed legislation would provide such incentive.

However, the Department is not prepared at this time to comment on the specific provisions of H.R. 13631. The administration has under consideration a number of important changes to the laws protecting proprietary rights and technical innovations in the United States. This review will have implications for programs such as the one proposed here. We wish to reserve further comment on the provisions of H.R. 13631 until we have had an opportunity to evaluate them in the light of the findings of this administration review.

Although I am unable to comment on policy aspects of the proposed bill, I have with me members of the Department's technical staff who would be glad to assist in answering any questions you may have concerning the technical aspects of the bill.

I will introduce the men accompanying me:

On my right is Dr. Martin Weiss, of the Agricultural Research Service; on my other side is Mr. Rubin Hoffman, of the Department's office of general counsel; and in the audience behind me is Mr. Stanley Rollin, who heads up our seed branch and our seed work in the Consumer and Marketing Service.

That concludes my statement, Mr. Chairman.

Mr. DE LA GARZA. Thank you very much, Mr. Blum.

Are there any questions of Mr. Blum and his associates?

Mr. KLEPPE. I do not have any now, but I wonder if you will be here through the rest of the hearing this morning.

Mr. BLUM. I was planning not to be, myself, but the other men who are with me will be here, who are thoroughly knowledgeable, and I will be available if I need to be called back.

Mr. KLEPPE. The reason I ask is that Mrs. May, one of the co-sponsors of this legislation, does have some questions she would like to have presented to representatives of the Department, and she is not here, nor do I know her questions. So, if someone would be around a little later, maybe we could call them back to the stand for questioning later on in the hearing.

Mr. BLUM. We will have responsible officials of the Department here. I think they can answer the questions. If not, I will be glad to come back.

Mr. KLEPPE. Thank you.

Mr. DE LA GARZA. Mr. Sebelius?

Mr. SEEELIUS. No questions.

Mr. DE LA GARZA. Mr. Purcell?

Mr. PURCELL. Mr. Blum, the Department has submitted a report addressed to the chairman of the Agriculture Committee on this bill?

Mr. BLUM. That is right. I think it came up just this morning. It has been submitted.

Mr. DE LA GARZA. If the gentleman will yield, we have a letter dated June 10, signed by J. Phil Campbell, Under Secretary, and, without objection, it will be made a part of the record.

Mr. PURCELL. In this letter you say the Bureau of the Budget advises there is no objection to the presentation of this report from the standpoint of the administration's program.

Mr. BLUM. Yes, sir.

Mr. PURCELL. Does that mean they approve it or disapprove it?

Mr. BLUM. They approve our report.

Mr. PURCELL. Are they going to let you have any money to run the bill with?

Mr. BLUM. That is a question for the future, I believe.

Mr. PURCELL. I had gotten word, as so often is the case, that the Bureau of the Budget this year is not approving anything Agriculture wants. I have been told that they had disapproved the bill from their standpoint. I am glad to see they state they approve of your report, whatever that report is.

Mr. BLUM. The report is to support the objectives, and defer final comment on the specifics. So, I think there are unanswered questions in the area you were asking about, Mr. Purcell.

Mr. PURCELL. As I understand your statement, the Department says it is studying this matter.

Mr. BLUM. Not the Department, but the administration is studying the general question of proprietary rights. This is being done on an interagency basis. The Department of Agriculture is not directly involved. However, it does relate to the content of this bill.

Mr. PURCELL. Is there some big, high-powered commission appointed to do this study, or is it just a question of the hired folks down there studying it?

Mr. BLUM. I am not aware of any commission. I think the personnel of the various departments are making the review.

Mr. PURCELL. I am trying to get at, is there any likelihood of this legislation being held up, if the administration can hold it up, because they have some further study going on?

Mr. BLUM. I do not know about the progress of the legislation. I think the situation is that the Department's report and the administration's position on the details of this bill are being held up until this review is completed. Hopefully, it would be a matter of weeks rather than months to get this job completed.

Mr. PURCELL. Is it the belief of the Department, or at least of you, that there are benefits to American agriculture to be derived from this bill or legislation of this kind?

Mr. BLUM. Yes, sir.

Mr. PURCELL. Do you feel that the general public will be benefited by this legislation or similar legislation?

Mr. BLUM. We do.

Mr. PURCELL. That is all I have, Mr. Chairman.

Mr. DE LA GARZA. Thank you very much.

Have you some questions now, Mr. Kleppe?

Mr. KLEPPE. Let me ask Mr. Blum one question that has been expressed by Mrs. May. If you cannot answer it, maybe one of your associates could answer.

Do you feel that the 5-year challenge provision is adequate to protect the interest of all those who would be affected by this bill? For

example, the experiment stations. Would the Department object to or have any recommendation regarding an amendment to strengthen or tighten up this provision to provide more safeguards such as exempting experiment stations entirely from the prohibitions of the bill?

Mr. BLUM. There are two parts to the question. I think we might comment on the first part. I am not sure we can comment on the second at this time.

I would like to defer to one of my colleagues on the first part of that. Dr. Weiss.

Dr. WEISS. The 5-year period was specifically put in because of the possibility that public agency or industry varieties might be purloined by unauthorized persons. That is why this long period has been put into the bill. We believe that it is adequate at the present time.

Mr. KLEPPE. You believe it is adequate?

Dr. WEISS. Yes; I believe that it is adequate.

Mr. KLEPPE. On the second part of the question, what is it that makes it difficult for you to answer or that you do not have the position on, asking whether you have any objection to an amendment relating to this provision?

Mr. BLUM. I suppose it is related in part to Dr. Weiss' comment, that it does involve questions that we have not considered at this point, and I would hesitate to give a final departmental view at this time.

Dr. WEISS. May I interject. I do not believe that it would be advantageous to permit public agencies to ignore protection granted other public agencies or private industry. After all, these varieties can be used in further breeding programs. That is provided specifically in the act. Therefore, we do not believe it would be advantageous to exempt public agencies or anyone else from the provisions of variety protection.

Mr. DE LA GARZA. Thank you very much, Mr. Blum.

I might say that we will take at face value your statement saying that the Department supports the objectives of this legislation. We consider you the administration. As to the specifics of the legislation, if some further study is made, then we will see later, but at this time we will accept your statement and proceed accordingly, that the Department supports the objectives of this legislation.

Mr. BLUM. That is correct.

Mr. DE LA GARZA. Thank you very much for being with us. We appreciate your cooperation.

Mr. BLUM. Thank you.

Mr. DE LA GARZA. Trying to hurry up the hearing, we just had a group of 4-H members here from North Carolina, and I was to introduce them, but they have left before we had the opportunity to do so.

To the rest of the witnesses, let me state briefly that we understand the Senate is trying to accommodate all the out-of-town witnesses by hearing your legislation tomorrow. We had scheduled originally today and tomorrow for this legislation. In order to accommodate you, we will try to finish today. Therefore, we would very respectfully ask of you that if you have a prepared statement and you wish to submit the prepared statement, we will take it and submit it for the record for you. If you would like to be identified and make a brief—and I mean

brief—statement in conjunction with your prepared statement, we can do that. If you insist on reading all of your prepared statements, then we have tried to cooperate with you to get you over to the Senate tomorrow, and if you do not get there in time, then it will not be our lack of cooperation with you. We will ask you to conduct yourselves accordingly.

We shall now be very happy to hear from Mr. Allenby White, chairman of the breeders' rights study committee, American Seed Trade Association, accompanied by other gentlemen whose names appear on the witness list.

STATEMENT OF ALLENBY WHITE, CHAIRMAN, BREEDERS' RIGHTS STUDY COMMITTEE, AMERICAN SEED TRADE ASSOCIATION, INC., ACCOMPANIED BY RICHARD McKENNA, PRESIDENT; D. D. WALKER, FIRST VICE PRESIDENT; LOUIS ROBERTSON, LEGAL COUNSEL; DALE PORTER, LEGAL COUNSEL; AND JOHN SOUTHERLAND, EXECUTIVE VICE PRESIDENT

Mr. WHITE. Thank you very much, Mr. Chairman.

My name is Allenby L. White. I am chairman of the American Seed Trade Association's Breeders' Rights Study Committee, and vice president for research and market development for Northrup, King & Co., a Minneapolis State company selling, developing, and producing many kinds of seed.

The American Seed Trade Association represents over 450 seed companies, 41 State and regional associations, and, we believe, the seed industry at large. The association headquarters are located in the Executive Building, 1030 15th Street, NW., Washington, D.C.

The American Seed Trade Association strongly supports H.R. 13631, and related bills, sometimes called the "Plant Variety Protection Act," because of a profound belief that this legislation will benefit not only plant breeders but will bestow even greater benefits on American agriculture and the community at large. In the following testimony, we shall attempt to provide the substance for this belief.

THE BASIC PRINCIPLES OF LEGAL PROTECTION

Article 1, Section 8, of the United States Constitution says:

The Congress shall have the power . . . to promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.

Congress acted on this constitutional mandate by enacting some patent legislation as early as 1790. Thus, it may be observed, the U.S. Patent System is an institution nearly as old as the Nation itself.

Much of the vigor and enterprise of the United States, both culturally and industrially speaking, can be attributed to its patent system. Abraham Lincoln once said that the American Patent System, "supplied the fuel of incentive to the fires of genius," thereby paying tribute to the innovators and creators of our Nation.

On May 23, 1930, the Townsend-Purnell Plant Patent Act was enacted into law. This legislation provided, for the first time in our history, the discoverer or originator of certain asexually-reproduced plant varieties with the right to legal protection for his developments.

Senate Report 315, dated April 2, 1930, cited the reasons for this legislation and stated, in part:

The purpose of the bill is to afford agriculture, so far as practicable, the same opportunity to participate in the benefits of the patent system as has been given industry, and thus assist in placing agriculture on a basis of economic equality with industry——

Today the plant breeder has no adequate financial incentives to enter upon his work. A new variety, once it has left the hands of the breeder, may be reproduced in unlimited quantity by all. The originator's only hope of financial reimbursement is through high prices for the comparatively few reproductions that he may dispose of during the first two or three years . . . Today, plant breeding and research is dependent, in large part, upon government funds to government experiment stations, or to the limited endeavors of the amateur breeder. It is hoped this bill will afford a sound basis for investing capital in plant breeding and, consequently, stimulate development through private funds.

Unhappily, this excellent law, even with its later amendment, provided legal protection only for certain asexually reproduced species. It left without legal protection varieties of those species which comprise the bulk of the Nation's total crop.

In Europe, meanwhile, certain nations, increasingly concerned with their agricultural productivity, began to perceive that one important solution to this basic national problem lay in spurring their plant breeding community to produce better, higher-yielding varieties, and enacted laws providing plant breeders with legal protection.

A number of European countries, having seen the benefits of such a law, came together to develop a convention which, when ratified by a majority of the cooperating countries, would come into force and provide the framework upon which national "breeders' rights" laws would be based. This convention is now in force and most Western European nations now either have new laws offering legal protection to plant breeders, or have such laws in late stages of development.

But, in the United States today, plant breeders still have no law protecting their innovations except as to the limited area of asexual (non-sexual) reproduction. If today's situation continues to persist, the American breeder and American agriculture will face an ever-growing disadvantage, not only in the international marketing of seed, but in the food, feed and fiber crops produced from it, since the productivity of such crops is determined in no small measure by the yield potential built into the varieties from which such crops are produced.

That the principle of legal protection for plant varieties is a sound one seems beyond dispute. This belief, in the principle of providing plant breeders with protection, seems amply supported by the U.S. Constitution; by the foresight of Congress, as elucidated in the quoted Senate Report No. 315, and by the fact that the Western European nations, and other nations, have accepted this principle to the extent of entering into regional conventions and enacting national laws codifying the basic principle.

THE BENEFITS OF LEGAL PROTECTION FOR PLANT VARIETIES

The benefits derived through provision of legal protection for plant varieties have been amply demonstrated in Western Europe where such protection has led to a great flowering of plant breeding, with the concomitant benefits of a more productive national agriculture and improved agricultural export. In the United States, where legal pro-

tection for plant varieties is not now available, we believe all of the following benefits may be expected from providing such protection:

1. It will greatly stimulate private plant breeding.
2. It will allow our Government agricultural experiment stations to increase their efforts on needed basic research.
3. It would permit public expenditures for applied plant breeding to be deviated to important areas which industry may not pursue.
4. It will give farmers and gardeners more choice, and varieties which are better in yield or in quality, and so forth.
5. It will make American agricultural products more competitive in world markets.
6. Consumers and other purchasers of crops will benefit: in some instances by improved quality, in others by aiding the production needed to serve them.

An explanatory word or two on these foreseen benefits may be in order.

The new law will definitely stimulate plant breeding. Experience in England provides a good case history. Prior to the enactment of its Plant Varieties and Seeds Act 1964, little plant breeding was done in England by private companies, and not much was done by government agencies. Since the new law came into effect, there has been a great upsurge of plant breeding, and a once moribund seed industry is now showing signs of great new vitality.

And we can, to some extent, draw on our own experience in reaching the conclusion that legal protection will stimulate private plant breeding. Prior to the Plant Patent Act of 1930, there was very little private plant breeding done aside from that performed by a handful of amateurs or hobbyists. Since then, some 2,700 plant patents have been issued, largely to commercial breeders. It is difficult to estimate the total value of the fruits, nuts, cut flowers and ornamentals deriving from patented varieties, but some insight into the value of this commerce may be obtained by considering the case of roses. It is estimated that 50 million rose plants, over 80 percent of which are from patent varieties, are sold to home gardeners in the United States each year. These plants have an estimated wholesale value of \$35 million. Additionally, there are some 20 million rose plants grown in U.S. greenhouses. More than 90 percent of these are of patented varieties and the flowers produced from them are estimated to have a commercial value in excess of \$50 million.

The availability of legal protection for plant varieties will allow our Government experiment stations to concentrate more of their efforts on greatly needed basic research. Plant breeding is becoming an ever more sophisticated science. If we are to continue to keep pace with developments elsewhere, our scientific institutions must constantly search out the new genetic techniques and properties which can be incorporated into the overall American plant breeding effort. Private seedsmen cannot afford to do this kind of research. The public institutions are well equipped for such investigations.

The availability of protection for plant breeders should increase the benefits from public expenditures where they continue to be used for applied plant breeding. Many public institutions today spend sizable sums of money on the development of finished plant varieties. Once released, these experiment station varieties are made available to all. Advertising and marketing such varieties is often not attractive.

Within a short time, many of those which are marketed disappear from the market because those who handle them learn they cannot make the kind of return on their investment needed to allow them to continually handle such varieties. This is a phenomenon well known to agricultural experiment station directors, and it is one reason, we believe, that these officials now look favorably on protection for plant varieties.

Legal protection for plant varieties will give American farmers the choice of more and better varieties. As pointed out, many experiment station varieties are short lived on the market. This knowledge has tended to discourage public institutions from applied plant breeding. The result is that farmers today are not being offered enough choices and not enough work is being done on some of our most important crops. Soybeans, one of our biggest crops, provides a good example of a crop that could and would be more productive as a result of the more and better varieties which would be made available as a result of legal protection for plant varieties. Other major U.S. crops, like cotton, wheat, barley, oats, and rice, for example, now largely ignored by the private researchers, would almost certainly benefit greatly from the impact of a competitive, private plant breeding effort.

Legal protection for plant varieties should make U.S. agricultural products more competitive in world markets. Higher crop yields help reduce per unit costs of the finished product, be it meat, milk, food, or fiber. Clear examples of this may be seen by noting the dramatic increase in yields of just two crops—corn and sorghum—which, as a result of their adaptation to hybridization, have been the object of keen competition among private plant breeders of this country. One hesitates to speculate what our position in the world market of these two crops might be if our breeders had not found it worth their while to solve the genetic riddles involved in unlocking greater yields of these important feed grains.

Although the foregoing statement has emphasized benefits to farmers, it is important to realize that all consumers and intermediate purchasers of farm products share in these benefits. To illustrate this we need only ask what would now be the cost to the consumer of almost any farm-derived product, if a farmer could only produce as much per acre as he did in 1930. In addition, it is primarily the consumer who benefits from those new varieties which provide the consumer with improved quality.

ACTIVITIES IN CONNECTION WITH LEGAL PROTECTION FOR PLANT VARIETIES

The American Seed Trade Association has long been aware of the lack of legal protection for sexually reproduced plant varieties, alive to the resulting inattention to the breeding of such varieties aside from those which could have biological protection because hybridized, and concerned about the continuing consequences both to the seed industry and to American agriculture. In 1961 the association appointed a Breeders' Rights Study Committee to investigate ways and means of providing legal protection for plant varieties.

The committee explored several means of accomplishing its objective. At one time it was decided that of all the alternatives considered, a simple amendment to the Plant Patent Act would be a practical solution.

The proposed amendment to the act called for insertion of the words, "or sexually" in sections 161 and 163 of the act, the net effect of which would be to permit the patenting of sexually reproduced, as well as asexually reproduced, varieties. This amendment failed in the standing Subcommittee on Patents, Trademarks, and Copyrights of the Committee of the Judiciary, but in referring to this proposed amendment, Senator McClellan, chairman, said in part:

The Subcommittee has received testimony both supporting and opposing an extension of protection to include sexually-reproduced varieties of plants. I have been impressed by the efforts of those who are seeking to develop new varieties of plants. These research activities should be encouraged by the granting of appropriate incentives. A significant difference of opinion exists as to the feasibility of accomplishing this objective through the plant patent statute. I understand that representatives of the American Seed Trade Association, the National Cotton Council, and other interested parties, plan to explore this subject further during the next few months with representatives of the Department of Agriculture and Patent Office. I hope that these conversations result in agreement as to a feasible course of action as to provide protection either within the patent system or by some other appropriate mechanism.

Attempts to reach agreement on the proposed amendment to the Plant Patent Act failed, and faults in that approach were recognized, so the American Seed Trade Association next undertook to develop a statute more carefully suited for plant variety protection. This effort resulted in a prototype of the legislation we are endorsing here today.

During the course of its attempts to develop a method for protecting plant varieties, the American Seed Trade Association has conscientiously consulted public and private bodies with any interest in this problem. Among those groups consulted are the U.S. Department of Agriculture, Agricultural Research Service and Consumer and Marketing Service; the Agricultural Experiment Station Directors, Experiment Station Committee on Policy; the Association of Seed Control Officials; the Association of Official Seed Certifying Agencies; the National Cotton Council; and other such organizations. Valuable counsel was received from all, the result of which was a number of new draftings all designed to make the best possible use of the new provisions or amendments urged upon us by our conferees.

Since the consultations referred to above had been held individually with the public groups just referred to, and since, therefore, there remained the possibility that changes suggested by one group might not be acceptable to another, it was decided to convene a conference during which experts of all the cited public agencies or organizations would have an opportunity, after agency-study of the then latest draft, to participate in such a meeting with the necessary directives and authority.

Accordingly, on March 25-26, 1969, a meeting was convened in Washington, D.C., which included representation from:

United States Department of Agriculture, Agricultural Research Service.

United States Department of Agriculture, Consumer and Marketing Service.

State agricultural experiment station directors.

Association of Seed Control officials.

Association of Official Seed Certifying Agencies.

The National Council of Commercial Plant Breeders.

The American Seed Trade Association.

During the course of this meeting, the proposed legislation was examined on a point-by-point basis and many significant amendments were made, most of which, in one way or another, were concerned with the public interest, including especially that of the farmer.

But, also raised during this meeting was the question of whether there should not be another method of protecting plant varieties. The seed certification group and the agricultural experiment station directors had both been directed by their constituents to support the principle of plant variety protection as laid down in the proposed act, but to also request that seed certification provide still another, and separate, means of protecting plant varieties. This directive raised the basic question of the wisdom of having two separate plant variety protection laws and a corollary question of legal prosecution of the right granted since, in one instance, the injured party would rely on civil court action for redress and, in the other, violations would be criminal acts, the prosecution of which would be conducted by the Federal Government.

It was decided there need not be two separate laws but, rather, that both forms of protection could be provided under the proposed Plant Variety Protection Act with an appropriate amendment to the Federal Seed Act. This solution, it was believed by the group, would satisfy the desires expressed by both industry and public organizations; would simplify the whole question of plant variety protection, and would give the individual applicant the option of obtaining either kind of protection through one basic source.

Very briefly, Mr. Chairman, that is a summary of the actions the American Seed Trade Association has taken to consult with public bodies; to assure that the public interest would be served by the proposed legislation, and to shape the legislation we are here today to endorse. We shall not attempt to describe for you the countless informal meetings we held with interested State and Federal workers; the specific ways in which these discussions have modified both the word and thrust of the proposed legislation, or the splendid spirit of cooperation which has characterized all these meetings. We sincerely believe that the product of these many discussions—the proposed Plant Variety Protection Act—represents a real testimonial to the efficacy of sincere Government-industry dialog.

COMMENTARY ON SALIENT PROVISIONS OF THE PLANT VARIETY PROTECTION ACT

The Plant Variety Protection Act is designed to provide legal protection for sexually reproduced plant varieties, a class for which legal protection has heretofore been unavailable.

In the commentary which follows, some salient features of the act are examined in the light of their meaning and purpose.

CHAPTER I, SECTION 1. ESTABLISHMENT

Section 1 established a bureau, to be known as the Plant Variety Protection Office, in the Department of Agriculture.

Those participating in the development of the proposed legislation examined at great length whether this bureau should be more properly

in the Department of Commerce. Not without some remaining disagreement, it was concluded it should be placed in the Department of Agriculture primarily on the basis that the expertise found in this Department would in any case be needed to determine the eligibility of candidate varieties.

CHAPTER I, SECTION 3. OFFICERS AND EMPLOYEES

Section 3 calls for the appointment of a Commissioner, an Assistant Commissioner and an appropriate staff. The Commissioner would be appointed by the Secretary of Agriculture. The Secretary is authorized to fix the compensation of each staff member at not in excess of the maximum scheduled rate provided for positions in level V of section 5316 of title 5, United States Code.

This section was included as presumably necessary for establishing a suitable office for administering the act. However, in conferring with technical experts of the Department of Agriculture we have learned that there is a belief that the organization of the Plant Variety Protection Office should be left more completely to the Secretary of Agriculture. This association has no objection to deleting section 3. It is observed that section 1 contemplates an office devoted solely to administration of this act, and that is deemed important for public confidence in the Office, lest there could appear to be some conflict of interest.

CHAPTER I, SECTION 7. PLANT VARIETY PROTECTION BOARD

A Plant Variety Protection Board will be established under the act which will be made up of individuals competent to review applications with approximately one half its members being drawn from the government or public sector, which could include a seed-consuming farmer representative, and the other half from the private or seed industry sector, which could include a seed-producer farmer representative, all serving without compensation. The Board will be advisory in nature. Among its most important functions, it will advise the Commissioner on:

1. Adoption of the rules and regulations.
2. Appeals from the findings of the examiner, and
3. Whether and how a protected variety should be declared open to the public.

The makeup of the Plant Variety Protection Board will require careful study. In order to provide an insight into its thinking and, possibly, to serve as later guidelines, the American Seed Trade Association offers the following proposals:

1. The Board shall consist of nine members: four from the seed industry, four from the public sector, and the Commissioner who shall serve as chairman.
2. The members shall be competent in the field of plant breeding and shall, insofar as possible, be selected in such a way as to collectively embrace knowledge of breeding of the overall array of species likely to be presented for plant variety protection.
3. In cases where the Board questions its competence to fairly adjudicate an appeal, the Board may elect to empower additional voting members, but only in the ratio of its industry-Government makeup.

4. Since the Board is advisory, and its findings are therefore not binding on the Commissioner, the Commissioner shall neither vote nor inveigle, but, rather, shall assume the role of a hearing officer.

CHAPTER 3, SECTION 31. PLANT VARIETY PROTECTION ACT

The proposed basic fee for plant variety protection would be \$100 per application. This fee would, however, be increased by the cost of appeals, for extra copies of certificates, late filing, and in several other ways, all of which could mean the average income per application would be close to \$175.

The American Seed Trade Association does not oppose the concept of establishing a schedule of fees, even though substantially higher than those proposed, which would place this agency on essentially the same footing as the U.S. Patent Office with regard to the relationship between income and expenses. We understand the Patent Office covers some 60 percent of its expenses with its income. It is questionable that plant breeders should assume a greater responsibility than this, however, since, because there are fewer plant breeders than industrial inventors, even a 60:40 ratio would result in a far higher cost per application than would be true of those for industrial patents or for asexual plant patents. And, in this connection, we feel obliged to point out that the higher fees called for in meeting the U.S. Patent Office ratio of expense to income tends to favor financially stronger breeders and discourage the small or amateur breeder or the breeding of crop varieties for which the sales potential may be small but the need critical.

In conference with Government technical experts we find there is a view that the fees set are too low and should be left to the Secretary of Agriculture. The association has no objection to this. The consideration of public interest previously mentioned can be considered by him.

CHAPTER 4, SECTION 42. RIGHT TO PLANT VARIETY PROTECTION; PLANT VARIETIES PROTECTABLE

This section states that any sexually reproduced plant may be protected (but calls attention to section 45 which excludes fungi, bacteria, and hybrids) unless the variety was found not novel. Specific examples of nonnovelty are covered by subsections (a), (b), (c), and (d) of this section.

CHAPTER 4, SECTION 43. RECIPROCITY LIMITS

The essence of this section is that the protection afforded by this act will be available to foreign breeders but (in the absence of treaty) only to the extent their respective countries offer legal protection to American plant breeders. "Breeders' Rights" laws of the different foreign countries contain certain exclusions with regard to species and certain benefits available only to "convention countries". It is the intention of the authors of this bill that these same exclusions would be applied to foreign applicants with the eventual hope that, in time, the reciprocity limits would be broadened or, hopefully, eliminated.

CHAPTER 4, SECTION 44. PUBLIC INTEREST IN WIDE USAGE

This section gives the Secretary the right to declare a protected variety open to public usage, for a period of 2 years, when he determines that such action is "necessary in order to insure an adequate supply of fiber, food or feed in this country and that the proprietor is not supplying the public needs at a price which may reasonably be deemed fair."

CHAPTER 5, SECTION 52. CONTENT OF APPLICATION

Section 52 lays down the basic provisions for the content of the application including the name of the variety and its description.

And, of great importance, this section and section 81(d) require that the applicant deposit a viable sample of the basic seed necessary for the repropagation of the variety in a public repository. The basic purpose of this provision is to insure that the variety will continue to be available to the public even when it is no longer protected and whether or not the former proprietor continues to produce it.

CHAPTER 5, SECTION 56. CONFIDENTIAL STATUS OF APPLICATIONS

The contents of applications shall be kept in confidence by the Plant Variety Protection Office and by others who have access to such applications, with certain noted exceptions. The Commissioner shall, however, be empowered to publish the kind and variety name stated in applications. The underlying purpose of this is to notify other potential applicants that certain names are thenceforth unavailable for their varieties.

CHAPTER 6, SECTION 61. EXAMINATION OF APPLICATION

This section provides for examination of applications, and issuing of a notice of allowance of plant variety protection. A question has been raised of the possibility of conflict with an application for plant patent. Although this possibility may be largely theoretical, this association has no objection to an appropriate amendment. There could be an insertion after the comma in line 18 of page 22 reading, "and subject to conferring with the Patent Office as to possible conflict with an application filed by another person for a plant patent on the same variety." A related suggestion is mentioned in connection with section 92.

CHAPTER 6, SECTION 62. NOTICE OF REFUSAL; RECONSIDERATION

This section provides for the refusal of applications; outlines the Commissioner's responsibility in such cases, and states the time applicant has for his response. The provision for an extra 3 months, by paying a small fee, primarily saves the Office from numerous time-consuming petitions which would otherwise result. There are other provisions under which the Commissioner could avoid prolongation of prosecution.

CHAPTER 6, SECTION 63. INITIAL APPEAL

Upon refusal by the examiner the applicant may appeal to the Commissioner who, in turn, must seek the advice of the Plant Variety Protection Board on all appeals, before deciding the appeal.

CHAPTER 7, SECTION 71. APPEALS

This provides the applicant whose appeal has been rejected within the Plant Variety Protection Office to make further appeal under the Federal Rules of Appellate Procedure. The Court of Customs and Patent Appeals, without limitation to that court, is given jurisdiction.

CHAPTER 7, SECTION 72. CIVIL ACTION AGAINST COMMISSIONER

The applicant dissatisfied with the decision of the Commissioner under sections 63 or 91 of the act may, as an alternative to appeal, have remedy against the Commissioner in the U.S. District Court for the District of Columbia. This court may upon review adjudge that the applicant is entitled to a certificate of plant variety protection.

CHAPTER 7, SECTION 73. APPEAL ON CIVIL ACTION IN CONTESTED CASES

This section further provides the applicant with the right to civil action against another party in cases where the Commissioner adjudges two applications from two breeders are based on the same variety.

CHAPTER 8, SECTION 83. CONTENTS AND TERM OF PLANT VARIETY PROTECTION

This section describes the nature or content of the two forms of legal protection offered to applicant. The certificate of plant variety protection excludes others from selling the variety, or offering it for sale, or reproducing it, or importing it, or exporting it, or using it in producing a hybrid or different variety except as otherwise provided in the act. The certificate conveys a right to the proprietor, which right he must ordinarily defend through appropriate civil action.

Section 83 also offers protection of the variety through certification and provides, in the United States, seed of the variety shall be sold only by variety name as a class of certified seed and, further, shall conform to the number of generations designated by the proprietor. This form of protection may be had in addition to that provided by the certificate of plant variety protection but not in lieu of it. As stated elsewhere, under interstate infringements on the protection offered by this certification, provisions would make available prosecution under the Federal Seed Act. The term of protection presently provided by the act is 17 years from the date of issue of the certificate regardless of kind or class of plant variety.

Finally and in the public interest, this section provides that the proprietor must maintain a supply of viable seed in a public repository to assure the continued availability of the variety in case of abandonment by the proprietor or to serve as a means of making the variety publicly available upon the expiration of the proprietor's legal protection.

CHAPTER 9, SECTION 91. REEXAMINATION AFTER ISSUE

Section 91 provides that within 5 years after a certificate issues, anyone may submit to the Commissioner facts showing that the certificate should not have been issued. This is to minimize expensive litigation and to reduce the danger that invalid certificates would stand. Any danger of abuse or hardship to proprietors is minimized by repeated use of the word "may" which gives the Commissioner full discretion as to reexamination. Section (c), in providing that the Commissioner may permit the submitter of facts to offer testimony in proof of them, represent no intention that the submitter of facts will remain a party beyond the stage of providing the necessary proof.

CHAPTER 9, SECTION 92. PRIORITY CONTESTS

Section 92 provides for priority contests, although such contests are expected to be extremely rare. The Commissioner is given the widest possible discretion as to how such conflict will be handled, so that he can choose the best possible method according to varying circumstances, and may profit by experience.

Because the association has encountered some concern with the theoretical possibility of conflict with a plant patent application, the following addition to section 92 is offered:

(c) In case of a priority conflict between an application under this act, certified or not, and an adversely owned plant patent for the same variety or an application therefor, the statutes governing each shall govern it irrespective of the other. However, no protection shall be available merely for determining that a variety already reproduced by another by one of the two ways (sexually or asexually) can be reproduced the other way. In the event of such conflict, if there should be valid protection under both statutes, each protection shall be confined to its own kind of reproduction.

CHAPTER 10, SECTION 102. OWNERSHIP DURING TESTING

The final evaluation of certain yield, quantity and processing characteristics of a new variety often requires production of the variety not under the direct control of the breeders. This section is intended to provide for the evaluation of the new variety, under notice, without jeopardizing the rights of ownership of the variety. This provision protects the breeder from the unscrupulous individual who may obtain seed during testing and provides that the rights of the lawful owner will not be lost.

The rights of a breeder who may be confronted with loss of a variety in these testing phases, and a dishonest attempt to protect this variety, is further protected by the 5-year period during which an issued certificate may be reexamined.

CHAPTER 11, SECTION 111. INFRINGEMENT OF PLANT VARIETY PROTECTION

Section 111 defines infringement quite broadly, but is all subject to the opening words "Except as otherwise provided." This refers especially to important exemptions found in sections 112 to 116.

CHAPTER 11, SECTION 112. RIGHT TO SAVE SEED

It is not the intent of this legislation to prevent a farmer from saving seed for growing a following crop. This section assures farmers that right. He cannot, however, as brought out in section 111, sell seed from his production or use it in producing (as distinguished from developing) a hybrid or different variety, without the authority of the owner of the variety.

CHAPTER 11, SECTION 115. RESEARCH EXEMPTION

Since the philosophy of the bill is, in part, to assure the farmers of a continuous source of improved varieties, it is not the intent of the bill to prevent the use of the germ plasm of a protected variety for plant breeding or other bona fide research. This section assures the research worker the privilege of transferring genetic characteristics from a protected variety without being held responsible for infringement of the protection provided the original breeder.

CHAPTER 12, SECTIONS 121 TO 126

Section 121 provides the essential remedy by civil action in case of infringement; and the following sections are mainly necessary collateral provisions for defenses, injunctions, damages, recovery of attorneys' fees in exceptional cases (such as lack of good faith), and a statute of limitations.

CHAPTER 12, SECTIONS 127 AND 128. FALSE MARKING; LIMITATION ON DAMAGES; MARKING AND NOTICE

Section 127, in addition to usual provisions for using the notation "U.S. protected variety," encourages distribution of a valuable new variety before a certificate has (been) issued by permitting honest use of the words "Propagation prohibited." Various safeguards are found in section 128.

CHAPTER 13, SECTIONS 131 AND 132. INTENT, SEVERABILITY

Sections 131 and 132 provide maximum certainty of constitutionality whether under the "authors and inventors" clause or the "commerce" clause.

CHAPTER 14, SECTION 141. EFFECTIVE DATE

By providing that the act takes effect upon enactment, unnecessary delay in achieving its benefits for agriculture and the public is avoided.

CHAPTER 14, SECTION 142. AMENDMENT OF FEDERAL SEED ACT

This is the language necessary to implement the optional provision providing for the limitation of sale of seed by variety name only as a class of certified seed as provided in section 83. With the enactment of the plant variety protection bill, section 142 will become title V of the Federal Seed Act.

CHAPTER 14, SECTION 143. AMENDMENT OF JUDICIAL CODE

This section merely coordinates the Judicial Code provisions for the U.S. Court of Customs and Patent Appeals with appeal provisions of this act.

SOME OPPOSITIONAL VIEWS AND SUMMARY

This committee will almost certainly be hearing some views opposing the proposed legislation in whole or part. We should like to comment briefly on some of the more common of these objections.

First, the objection: "The bill would create a breeders' monopoly and result in higher prices for seed."

It must be observed that, today, breeders have two forms of varietal protection available to them: The Patent Act offering legal protection for asexually produced plant varieties and, secondly, biologic protection arising from the utilization of hybridizing techniques.

Most rose varieties offered today are patented. These rose plants are normally reproduced not only by the developer but by others. And they are sold by sales outlets of all kinds including discount stores of one kind or another. The breeder cannot and does not determine the price, the natural result of which, of course, is that prices for a given variety vary widely. The purchaser may choose the price he is willing to pay. An examination of the rose industry will disclose as a result, and despite its ability to legally protect its product, the rose industry is a highly competitive industry no more profitable than most and less profitable than many.

The hybrid corn industry deals in a biologically protected product. A survey of 1970 prices for hybrid seed corn of the same genetic class and kernel grade, shows a difference of about 17 percent between the published high and low prices of some of the major companies. If other inducements, such as discounts, prizes and incentives, are considered, the spread becomes even greater. And, it is not uncommon to see price differences of up to 50 percent.

On the basis of these examples and others which could be enumerated, we in the American Seed Trade Association see no justification for the fears that the enactment of this bill into law would result in either a breeder monopoly or in higher farmer prices.

Second, the objection: "The bill would interfere with the free flow of germ p'asm."

The concern here seems to stem from the belief that public breeders would retain their valuable breeding materials in the hope of financial gain and that this would slow the overall pace of varietal development. Whether this happens or not will be determined by the policy of the individual experiment station. We do not believe the enactment of this bill into law would materially alter present experiment station policy. We base this conviction largely on the basis of the fact that it has not happened in the case of hybrid corn and hybrid sorghum, for example, even though with these and other hybrid crops, the public breeder has a biological protection mechanism available to him which, by any evaluation, must be considered as even more certain and theftproof than legal protection.

Third, one group, the Washington Wheat Commission, has expressed a concern that: "The Plant Variety Protection Act would result in the release of wheat varieties which could threaten the quality of the Northwestern wheat crop."

Representatives from the American Seed Trade Association met with the Commission and others to explain that this objection was in no way linked to the Plant Variety Protection Act. Wheat varieties will be bred for and released in this region whether or not the proposed law is enacted. We propose, that if this concern is considered a valid one, that the Washington Wheat Commission sponsor legislation in the State legislature which would require that any new wheat variety must meet certain predetermined quality standards before sale would be permitted in that State. Such a law, obviously, would act to prevent the sale of both protected and nonprotected varieties of wheat—a possibility that would not be available through the amendment of the proposed Plant Variety Protection Act.

And, finally, there has been the objection: The Plant Variety Protection Act would not be self-financing.

In framing the proposed act, we in the American Seed Trade Association took the view that the act should be essentially self-financed.

In summary, we in the American Seed Trade Association believe that the enactment of the proposed Plant Variety Protection Act into law will bestow important benefits of American agriculture among which the following are the more important:

1. It will greatly stimulate private plant breeding.
2. It will allow our Government agricultural experiment stations to increase their efforts on needed basic research.
3. It would permit public expenditures for applied plant breeding to be deviated to important areas which industry may not pursue.
4. It will give farmers and gardeners more choice, and varieties which are better in yield or in quality, and so forth.
5. It will make American agricultural products more competitive in world markets.
6. Consumers and other purchasers of crops will benefit: In some instances by improved quality, in others by aiding the production needed to serve them.

The authority for establishing the financing provisions of this law have not been dealt with by ASTA.

That concludes my statement, Mr. Chairman.

MR. DE LA GARZA. Thank you very much, Mr. White.

Are there any questions of Mr. White?

MR. PURCELL. I tried to listen carefully to your statement. What opposition is there to this bill of which you are aware, other than the Washington Wheat Commission?

MR. WHITE. None that I am aware of. I think this is the only opposition that I am aware of, but I would like to defer to my colleagues to see if they have any further comments.

MR. SOUTHERLAND. As far as we know, that is the only opposition to this legislation.

MR. PURCELL. Thank you, Mr. Chairman.

MR. DE LA GARZA. Thank you very much. We are very happy to have you here, Mr. White.

As stated, your prepared statement will appear in the record rather than your extemporaneous statement of today, and the same is true of all other witnesses who have a prepared statement. Your prepared statement will appear in the record, rather than your extemporaneous remarks of today.

We will now be very happy to hear from Mr. John Rogers, Secretary-Treasurer, National Council of Commercial Plant Breeders.

STATEMENT OF JOHN S. ROGERS, SECRETARY-TREASURER, NATIONAL COUNCIL OF COMMERCIAL PLANT BREEDERS, ACCOMPANIED BY JOHN SUTHERLAND, EXECUTIVE VICE PRESIDENT

Mr. ROGERS. Thank you very much, Mr. Chairman.

My name is John S. Rogers. I am speaking on behalf of the National Council of Commercial Plant Breeders in support of H.R. 13631, which is a bill to provide plant variety protection.

I served as president of NCCPB during 1962-63, and have been the Secretary-Treasurer of this organization since that time.

My present employment is as director of research for the Asgrow Seed Co., which has its headquarters in Orange, Conn. Our primary business is the development, production, and distribution of vegetable and agronomic seeds in both the domestic and international markets. Our company has been a member of NCCPB since its beginning and strongly supports the NCCPB's position on this legislation.

The National Council of Commercial Plant Breeders was founded in Memphis, Tenn. in 1954 to represent the interests of private American plant breeders at home and abroad, to promote cooperation and understanding between public and private plant breeders, and to encourage the development of high professional and ethical standards in American private plant breeding.

Since our beginning in 1954, we have grown to a membership of more than 40 firms, representing a major part of the private plant breeding being conducted in the United States. A recent survey shows that member firms employ over 300 professional workers, which include 100 Ph. D. scientists and an equal number of M.S. degree personnel. Over \$10 million is expended annually by member firms in their research programs.

Private plant breeding has enjoyed significant growth during the past two decades, particularly in crops such as corn, sorghum, alfalfa, wheat, cotton, and certain vegetable species, where technological developments giving natural protection have made recovery of research expenses and profits possible.

A most significant accomplishment of NCCPB has been to bring together into one organization most commercial plant breeding interests in the United States. Through this association of representatives working in many diverse crops, it has been possible to review common opportunities and problems and to establish common goals and ethical standards for commercial plant breeders.

A major objective since the inception of the council has been the development of a system of voluntary plant variety protection for the private developer, or inventor, of plant improvements, in order that said developer can capitalize on his improvement if he wishes and have incentive to develop further improvements. It is the conviction of the NCCPB that developers (inventors) of plant improvements are entitled to the same kind of voluntary protection that is available to inventors in other fields.

During the past few years the major activity of NCCPB has been to work cooperatively with American Seed Trade Association to achieve legislation providing appropriate protection for individuals or firms engaged in plant breeding. In developing potential legislative approaches for plant variety protection, both NCCPB and ASTA

have worked closely with appropriate personnel from the U.S. Department of Agriculture and the land grant universities. Considerable time and effort have been devoted to this objective of plant variety protection for the past few years, and there has been a conscious and continuing effort to consider all possible interest in the development of any legislation.

The present Plant Variety Protection Act, represents the culmination of these several years of effort by the various organizations and personnel involved. We sincerely believe that the proposed bill represents both an equitable and practical approach to the subject of plant variety protection, as well as providing an incentive for the developer and the opportunity for public benefit.

I will not go into detail on the various sections of the bill, but I would like to make three specific statements which I believe provide the primary basis for justification of this particular legislation:

1. Developers of plant improvements are entitled to the type of voluntary protection that is now available to inventors in other fields. In this legislation, what we are asking for basically is the right of ownership to the product developed by the plant breeder. Considerable investment in time and money is required for the development of varieties, and it appears only equitable that the organization or individual developing the variety should be entitled to the rights of ownership. The present bill provides this right to the developer, or owner.

2. Through plant variety protection, which permits ownership of the variety by the developing firm or organization, considerable stimulus should be provided for investment in further plant breeding efforts. Significant investment is now made in both the private and public area for plant breeding, and the contributions from these research efforts have truly been outstanding in the terms of new and improved varieties.

Progress in the hybrid crops such as corn, sorghum, onion, cucumber, and cabbage has been particularly significant where the technological developments permit recovery of research expenses and the possibility of profits. The degree of private investment in corn and sorghum research during the past few decades is ample testimony to the fact that considerable investment will be made where (due to some form of protection) profitable opportunities exist in plant breeding. With the enactment of a Plant Variety Protection Act, we can expect additional private investment in plant breeding programs for all important crops.

3. Significant public benefits will result from the enactment of a Plant Variety Protection Act which stimulates development of new and improved varieties. Technically speaking, there is ample evidence that significant improvements can be made in any crop species where adequate investments are made for plant variety improvement. The main restriction to date has been the amount of investment being made in the field of plant breeding, whether private or public.

A stimulus to private investment in plant breeding through a Plant Variety Protection Act is certain to result in the development of improved varieties in many of our important crops. For example, crops such as soybeans, wheat, cotton, rice, and many others would represent greatly improved opportunities for private investment with an adequate Plant Variety Protection Act.

We are presently witnessing a dramatic breakthrough in plant breeding in the "green revolution" taking place in many of the developing nations of the world. This progress has been primarily possible through the development of improved cereal varieties which are much more productive. The development of better yielding varieties of all food and feed crops is especially significant at this period of history when population in many areas is surpassing our ability to produce food.

I would like to close my statement on a personal note. It has been my privilege to be engaged in either plant breeding or plant breeding administration for more than 30 years. During this time I have spent approximately one-half of my career in the public service, while the remainder, and more recent years, have been devoted to private plant breeding. On the basis of my experience, I would like to emphasize that plant breeding does provide a rewarding and meaningful career, and I have indeed appreciated the opportunity of working in this field for such a period of years.

As a result of this experience, it is certainly my personal conviction that plant breeding has made and can continue to make significant contributions both domestically and internationally. I also firmly believe that enactment of the Plant Variety Protection Act will encourage investment in and, therefore, accelerate progress in the field of plant breeding.

We have the opportunity, therefore, through enactment of this legislation, to insure the development of improved varieties which will, in turn, contribute to the public welfare through their usage.

Mr. DE LA GARZA. Thank you very much.

Are there questions?

Mr. KLEPPE. Mr. Rogers, Mr. White testified that the hopes and aspirations of this legislation were to be immediately self-financed. How do you look at this? Do you look at this as something which would primarily finance itself?

Mr. ROGERS. I believe that is the general approach we have; yes, sir.

Mr. KLEPPE. I want to compliment you on your statement. It seems to me the thrust of this legislation is so different and so one-sided in favor of it that it would be awfully hard for anybody to criticize it, because it is fair. The only question, it seems to me, that could come up, other than the one that has been raised by the Washington State Wheat Commission, is the question of financing. I don't have before me the costs of running the U.S. Patent Office as an example, but we are talking about something here which would be fair to plant breeders, comparable to what it is in industry. It would seem to me that this is a competitive aspect of our life, and because of that it could be self-financing.

I was curious; do you know of anybody who objects to this legislation?

Mr. ROGERS. No, sir; I do not.

Mr. KLEPPE. As far as you are concerned, you see that it would be, and should be, primarily self-financing, with the possible exception of some administrative costs in setting it up?

Mr. ROGERS. Our viewpoint is substantially that stated by Mr. White. Perhaps Mr. Sutherland has something to add.

Mr. KLEPPE. I think he commented previously. That is fair enough. Thank you very much.

Mr. MATHIAS. Mr. Rogers, I have some questions for you.

In your organization, how many people are involved in plant breeding? Have you any idea?

Mr. ROGERS. We made a recent survey. There are around 350 what we call professional people engaged in plant breeding. There are a little over 100 Ph. D. personnel and somewhat over 100 master's degree, graduate-type personnel.

Mr. MATHIAS. If this bill were enacted, do you see any increase in that number?

Mr. ROGERS. I think there is absolutely no question that with the enactment of legislation of this type, there would be considerable expansion in the number of technical professional personnel employed in the field of plant breeding in private industry. I am confident of that. The exact number, of course, would be difficult to project, but it would be significant. I think we are talking about an increase of, say, 50 percent or more.

Mr. MATHIAS. The same would go for the money contribution. That would be increased, also?

Mr. ROGERS. That is correct. The first effect would be the additional investment which would be attracted to this area. We have had excellent evidence of this in the areas where it has been possible to protect proprietary rights through technical techniques such as hybrid corn and hybrid sorghum. There have been significant investments made there, and we anticipate there would be in this instance.

Mr. MATHIAS. What organization did the most in the development of grain sorghum?

Mr. ROGERS. I do not know that I would be qualified to comment specifically on that, sir. A number of experiment stations of the USDA in the public area and a number of private firms all contributed to that development. I would hate to single anyone out at this point. There was a significant contribution in both the public and private area in the development of hybrid grain sorghum.

Mr. MATHIAS. Would it be rather difficult, if three or four different organizations came up with exactly the same seed on grain sorghum, to give a patent to one organization and not to the others when they had developed exactly the same seed? Is that possible?

Mr. ROGERS. We are getting into a technical area, sir. The likelihood of independent breeding programs coming up with exactly the same product is almost impossible. The number of genetic combinations possible are infinite.

In separate breeding programs, there would be some differences expected in the material developed and in the products that would result from the separate programs.

Mr. MATHIAS. In other words, after 50 or 100 years of breeding, there are still possibilities.

Mr. ROGERS. Unlimited, sir. The germ plasm available within each particular species has been explored to a fairly limited extent. With the introduction of additional techniques and knowledge whereby we could introduce new germ plasm, quite extensive work is being done, for example, in sorghum in the collection of new material throughout the world. There are tremendous opportunities and possibilities for new types to be developed.

Mr. MATHIAS. Thank you very much.

Mr. DE LA GARZA. Further questions?

Thank you very much, Mr. Rogers. We are very happy to have you.
Mr. ROGERS. Thank you.

Mr. DE LA GARZA. We will now hear from Mr. Richard W. McKenna, representing the Ferry-Morse Seed Co.

**STATEMENT OF RICHARD W. McKENNA, SENIOR VICE PRESIDENT,
FERRY-MORSE SEED CO., MOUNT VIEW, CALIF.**

Mr. McKENNA Thank you, Mr. Chairman.

Mr. Chairman and committee members, my name is Richard W. McKenna. I am the senior vice president of Ferry-Morse Seed Co., a wholly owned subsidiary of Purex Corp., Ltd., a California corporation.

Our company develops, produces, and merchandises vegetable, field, and flower seeds for national and international distribution. In our research, we are primarily concerned in increasing productivity and quality of product.

I am interested in the passage of a Plant Protection Act that provides for voluntary participation by the originator. I refer in particular to H.R. 13631 and related bills.

Speaking on behalf of the American Seed Trade Association, and also speaking for our company, I strongly support the Plant Variety Protection Act which is being recommended by the membership of the association and many other agricultural groups. It is my considered opinion that developers of plants requiring sexual reproduction for maintenance should have the encouragement of the opportunity to benefit from their efforts in a manner similar to that granted to developers of products covered under the Patent Act.

There are at the present time many important areas that we cannot justify expenditures in research and development because of lack of legal protection. It is our intention to materially increase expenditures in research, providing protection is made available to the seed breeder.

The governments of several European countries, in particular West Germany, Holland, Austria, Denmark, England, and France, have already seen the need for and have made available in their respective countries a form of plant variety protection to developers of sexually reproduced plants.

It is my opinion that H.R. 13631, and related bills, would provide an effective and equitable system. It would be voluntary and protection would be based on novelty, distinctness, uniformity, and stability of the variety. It places responsibility for the defense of the protection granted on the owner of the rights, at his expense. The system would be available to any originator or developer of a new sexually reproduced plant variety. It would not interfere with the free flow of information and breeding materials among plant scientists and it would allow any farmer the right to reproduce seed for his own planting.

We are just now beginning in agricultural research to unlock and understand some of the mysteries of plantlife. We must exploit new discoveries as rapidly as they become known in order to establish unique and more stable germ plasma in the form of superior and novel varieties.

Applied agricultural research must be encouraged and expanded, particularly in the private sector, if the economy of our country is to reach its full potential. There is no question in mind but that a Plant Protection Act will stimulate greatly increased activity and investment by business in the research needed for better food products. Such activities by private enterprise will enable Government to apply its agricultural research expenditures to the best possible use with concentration in much needed basic research.

I am confident that a Plant Protection Act will encourage a more open exchange of germ plasm between public and private researchers. Certainly, there must be a close and unselfish rapport between all scientists if we are to succeed in reaching mutual goals which are of benefit to the public.

Your favorable action on H.R. 13631, and related bills, will be greatly appreciated.

Mr. Chairman, I do appreciate having the opportunity to present my views on this important matter.

Mr. DE LA GARZA. Thank you very much for your cooperation.

Are there any questions of Mr. McKenna?

Thank you very much. We are very happy to have you.

Mr. McKENNA. Thank you, sir.

Mr. DE LA GARZA. We shall now hear from Dr. Harold D. Loden, director of research, ACCO Seed, Anderson, Clayton & Co., Belmond, Iowa.

**STATEMENT OF DR. HAROLD D. LODEN, DIRECTOR OF RESEARCH,
ACCO SEED, ANDERSON, CLAYTON & CO., BELMOND, IOWA**

Dr. LODEN. Mr. Chairman, my name is Harold D. Loden. I am director of research for ACCO Seed, Division of Anderson, Clayton & Co., Belmond, Iowa. Our company develops, produces, and distributes proprietary corn and sorghum hybrids and proprietary varieties of cotton.

We strongly support H.R. 13631, and related bills, which would provide legal protection for the developers of new sexually reproduced plant varieties.

This proposed legislation may appear to be designed to improve the lot of the commercial plant breeder, however, we state without fear of contradiction that the real recipient of the benefits inherent in this legislation will be the American farmer and indirectly the consumer of the products of American agriculture.

H.R. 13631 will provide a basis of protection to the developer of new sexually produced plant varieties and further establish the incentive for increased effort in plant variety development by creating the possibility of recovering funds expended for plant breeding research. New plant varieties are of no value to the developer unless he can profitably produce and sell them; his only market is the farmer who in turn is motivated to buy a new variety because he expects increased profit to result from its use. We must accept the fact that legislation providing plant variety protection will afford benefits, not only to the farmer who buys planting seed, but also to the agribusiness economy into which the products of the farmer must ultimately be sold and consumed.

A look at the commercial plant breeding firms presently maintaining research programs for the development of field crop varieties shows it to be dominated by firms producing hybrid seed. Crops in which practical first generation hybrids can be produced have "built-in genetic variety protection." It is obvious that a workable form of variety protection is available to developers of hybrid varieties in which the breeder retains control of the parental seedstocks. This built-in genetic basis for variety protection has provided the necessary economic base and incentive for investment of private funds in development of hybrid varieties.

Commodity groups have recognized the value of variety protection in improving not only the per acre production but also product quality. During the last session of the Texas Legislature, a bill was passed requiring use of the certification tag as proof of varietal identity of varieties accepted for certification when such seed are sold in trade channels. This legislation provides the basic mechanism for protection of developers of cotton varieties accepted for certification in Texas. The basic reason for passage of this legislation was the inherent improvement of the quality of the Texas cotton crop which will result from use of genetically pure planting seed.

It is not necessary to dwell at length on the contribution of the hybrid corn and hybrid sorghum industries to the agricultural economy of the United States. Available statistics on increased per acre yields, and therefore farm income, prove without a doubt that the major beneficiaries of the developments of commercial hybrids of corn and sorghum have been, and will continue to be, the American farmer and the consumer of the products he produces in increasing quantities and at continually lower per unit costs. The vast majority of today's corn and sorghum hybrids are the result of investment of private funds in variety development research. The hybrid, field seed industry has shown the capacity and willingness of the seed industry to invest corporate funds for applied research when recovery of funds invested and reasonable profits can be expected because of built-in genetic protection.

I recently made a survey of seed firms having research programs for the development of proprietary field crop varieties to determine if they would expand their research program to include soybeans when a legal system of plant variety protection was available. Soybean varieties, with few exceptions, have traditionally been developed by public funds; one of the compelling reasons being that as a self-pollinated crop the "right" to a soybean variety is lost upon first sale of seed of a new variety. The survey showed that all firms having production and research facilities in soybean producing areas would initiate soybean variety development programs, or expand present efforts, when variety protection becomes a reality. This survey proved without a doubt that legal variety protection will result in a tremendous increase in private research effort directed toward soybean variety development, the benefits of which will accrue directly to the soybean farmer and the American soybean economy.

I would like to illustrate the "other-side-of-the-coin" in research for soybean variety development by an experience of our company. About 20 years ago we initiated a program designed to encourage soybean production in West Texas. One phase of our effort was directed toward variety development. After more than 10 years of

breeding research, we donated all of our soybean breeding stocks and records to the High Plains Research Foundation, a private research institution supported by voluntary contributions. This was done since we recognized that without variety protection, continued investment in this phase of our research program could not be expected to return a profit.

The current interest of private research organizations in wheat breeding research provides a dramatic example the willingness of private firms to invest funds in variety development with a reasonable possibility of obtaining a profitable return. Until a few years ago only two private firms in the United States maintained significant wheat breeding programs. The developments which have made wheat hybrids a possibility, even though not yet a proven practical reality, have resulted in at least twelve private firms employing more than thirty professional researchers in wheat breeding programs. This increase in research efforts for wheat variety development could have been generated by legal variety protection as well as by the possibility of having built-in genetic protection. The primary beneficiary of this additional research, supported by nontax funds, will be the American wheat producer.

The passage of H.R. 13631 will offer benefits and opportunities for the small seedsmen to probably a greater degree than to larger firms. Many small breeding firms are engaged in the development of varieties of very specialized crops with relatively small sales volume; examples are petunias, tomatoes, and other floral and horticultural crops. In these specialized areas of variety development expenditures for research will usually represent a larger percentage of the sales dollar than for large volume field seed crop varieties. Another example of the type of benefits afforded the small seedsmen would be the availability of protection to those individuals who make significant discoveries of new crop varieties such as combine type grain sorghum by W. P. Martin or the original stormproof stripper cotton variety by H. A. Macha. These two men are examples of the many who have advanced American agriculture in the introduction of significantly improved crop varieties who, due to lack of variety protection, were not adequately rewarded for their contributions. The existence of more than 300 small specialized seed breeding firms in Germany, which has a system for variety protection, is considered indicative of the type of growth of small seed breeding companies we could experience in the United States with the passage of H.R. 13631.

The absence of any form of legal protection for the originators of new plant varieties which reproduce sexually has forced many companies to forgo comprehensive research programs, this is particularly true for those firms who are engaged primarily in the production and distribution of crops in which production of first-generation hybrids is either not possible or practical. The enactment of legislation providing for plant variety protection would result in the initiation of private research programs for the entire spectrum of crop varieties—the missing link to significantly increased efforts in plant variety development is a system of legal protection such as sought by H.R. 13631.

Our firm, as a member of the private plant breeding industry, feels that the passage of H.R. 13531 will provide a method for the continued expansion of the free enterprise system and that an unbridled and

protected plant breeding industry could make major contributions to agriculture, not only in the United States, but also aid in our Nation's commitments to aid in feeding and clothing the underdeveloped nations of the world. We look forward with anticipation to the opportunity of participating in the new, exciting, and competitive plant breeding efforts such legislation will generate. We are convinced that the additional investment and competition generated by H.R. 13631 will serve the best interests of American farmers, and of greater importance it will be in the general public interest and will strengthen our total agricultural economy.

We urge passage of H.R. 13631, and appreciate the opportunity to present our views on this very important matter.

Mr. DE LA GARZA. Thank you very much, Dr. Loden.

Are there any questions of Dr. Loden?

There being no questions, we appreciate your cooperation, sir.

Now we shall be very happy to hear from Mr. George B. Babeock, general manager, Grower Seed Association, Lubbock, Tex.

**STATEMENT OF GEORGE B. BABCOCK, GENERAL MANAGER,
GROWER SEED ASSOCIATION, LUBBOCK, TEX.**

Mr. BABCOCK. My name is George B. Babeock. I am general manager of Growers Seed Association in Lubbock, Tex. Growers Seed is a regional federated cooperative with a membership of 179 cooperatives located primarily in west Texas, southwestern Oklahoma, and eastern New Mexico.

Our association develops and produces cotton planting seed and hybrid grain and forage sorghum seed for distribution to our membership.

Our board of directors has endorsed and supports H.R. 13631 and related bills. This endorsement has come after careful consideration and evaluation of the bill. For purposes of pointing out the significance of this board decision, I would like to call your attention to the organization and structure of our board. Each of our member cooperatives names a representative to serve on our board of directors. Presently our board is composed of 179 men representing a like number of local communities. The combined number of cotton and sorghum farmers who own and direct these local cooperatives is conservatively estimated at approximately 25,000.

Mention has been made of the recent passage by the Texas Legislature of a bill offering protection to the developers of cotton varieties in Texas. Our association opposed the first attempt at passage of this bill. The reason for opposition was simple. The bill offered the plant breeder "breeder's rights," but in our opinion omitted "farmer's rights." We believe that H.R. 13631 in section 112 guarantees adequate protection for farmers. This section allows farmers the right to save seed for their own use.

Another concern of our association, and one which has been carefully considered, was whether some seed companies who have large sums of capital available for research would be willing to enter into royalty bearing contracts with cooperatives or smaller seed companies for the right of reproduction of their privately developed varieties. Our feeling, after discussing this particular point with several companies, and after actually entering into contract with two companies,

is that no company, no matter how large, will be able to supply all the planting seed requirements of American farmers.

Section 112 becomes important here in that it offers farmers the means to directly influence the decisions and practices of seed companies in the allocation and distribution of the supply of seed of non-hybrid varieties. If the developer of a variety is not willing to make available its variety in adequate supply and at a reasonable price, the farmer can increase seed of the variety for his own use. We believe that all developers of varieties will be willing to cooperate on a reasonable basis with others to insure that an adequate seed supply is available to meet demands of farmers.

Many cooperatives and small seed companies have relied on the public research agencies to develop and release advanced breeding material and new plant varieties. H.R. 13631, in section 115, provides for a research exemption, whereby the use and reproduction of a protected variety for plant breeding or other bona fide research shall not constitute an infringement of the protection provided under the bill.

Most public agricultural experiment stations operate on a limited budget. In our opinion, H.R. 13631 will provide the mechanism for the public research agencies to increase their income and thereby make available additional funds for an accelerated plant variety research program. This can be accomplished by the agricultural experiment stations offering their new varieties for sale and/or entering into royalty bearing contracts with seed companies for the right of reproduction and sale of seed of protected varieties developed by these public agencies.

I will be the first to admit that commercial plant breeding companies will greatly benefit from the protection afforded by the passage of H.R. 13631. I would like to point out, however, that farmers and the public at large stand to gain much more as a result of increased yields and lower per unit costs.

Next to the soil, seed is the foundation of American agriculture. Farmers that own our association recognize the importance of applied research in the development of new varieties. Applied research for variety development is a slow and costly process. An organization engaged in variety development is entitled to a fair return on its research investment. If America is to continue to be the agricultural leader of the world, more must be done by both the private and the public sector in developing new and better crop varieties.

Mr. Chairman, I will be happy to respond to any question which you or any member of the committee may have.

Mr. DE LA GARZA. Thank you very much.

Are there any questions of Mr. Babcock?

There being no questions, we appreciate your cooperation.

Mr. BABCOCK. Thank you very much.

Mr. DE LA GARZA. We shall be happy to hear now from Dr. Jim W. Neely, director of research, Coker's Pedigreed Seed Co. Dr. Neely.

STATEMENT OF DR. J. W. NEELY, DIRECTOR OF RESEARCH, COKER'S PEDIGREED SEED CO., HARTSVILLE, S.C.

Dr. NEELY. Mr. Chairman and committee members, my name is J. W. Neely. I am vice president of Coker's Pedigreed Seed Co. of Hartsville, S.C.

My company has been the breeder of varieties of several Southern field crops for 68 years. We strongly support the bill H.R. 13631, and related bills.

One of these crops is soybeans. Over a period of 4 years we have spent several hundreds of thousands of dollars to develop a variety, Hampton 266, that is now being widely grown in the Southeastern United States. At least 83 percent of the soybean acreage of South Carolina is planted in this variety, according to a report of the South Carolina Crop & Livestock Reporting Service of the U.S. Department of Agriculture and Clemson University. A significant part of the soybean acreage in other Southeastern States is planted with seed of this variety.

The adoption and growing of this variety has been one of the important reasons for the marked increase in the acreage planted to soybeans and in the improvement of the quality of the crop.

My company has lost hundreds of thousands of dollars in its soybean business. At the same time, by all known standards, our business is recognized as being conducted in a sound and efficient manner.

While we have been losing money with this soybean item, many seed growers, good friends of ours, have been increasing seed of our variety that were purchased from us, and most of them have had a profitable business based upon the production and merchandising of seed of Hampton 266.

We feel that we should have legal protection so that we may receive a deserved share of the total income from the sale of seed of varieties developed by us as a result of our expensive research program. We know that if the Congress passes legislation providing for plant variety protection we, along with other plant breeders, can assure farmers of continued service of high-quality seed of high-performing varieties.

I am very grateful to you, Mr. Chairman, and to the other members of the committee, for the opportunity of presenting my views relative to this proposed legislation.

Mr. DE LA GARZA. Are there any questions?

Mr. KLEPPE. Yes, Mr. Chairman.

You have made a very interesting statement about the experience of your company in this one variety, I think. Do you understand this legislation will give you the protection that, as a company, you would need down the line? For example, if I might develop the question, you develop this variety and sell it to a farmer. The farmer raises this and, in turn, decides it is a pretty good variety and he is going to sell it to his neighbors. The responsibility for enforcing that would be yours under this legislation, as I understand it.

Dr. NEELY. That is right.

Mr. KLEPPE. Do you believe this legislation provides that protection?

Dr. NEELY. Yes, sir.

Mr. KLEPPE. The difficulty would be eliminated by being able to control your patent rights?

Dr. NEELY. Yes, sir.

Mr. KLEPPE. Thank you.

Mr. MATHIAS. I am curious as to what kind of contract you would make with other people if you have this right.

Dr. NEELY. We have in mind fairly definitely the type of contract we would make. It is not specific yet. I think it would vary with

different crops and breeders. We would probably have something that amounts to charging a royalty for seed that are produced from seed supplied by us. There are several ways in which that could be handled. The royalty base is more or less an example of the type of arrangement that we would have.

Mr. MATHIAS. Would you establish your royalty on the amount of money you spend on research?

Dr. NEELY. That is right, what we consider a reasonable profit.

Mr. MATHIAS. This would actually raise the cost of the seed to the user.

Dr. NEELY. No, sir, it should not. We do not anticipate that. In some of our anticipation, we can see why the cost of seed would be less. I know that seems rather strange to a person who is not in the seed business, but that can be arranged along this line: We spend a tremendous amount of money developing a variety before we release it. As soon as we release that variety, as you have indicated you understand, it becomes public property and it is increased and people who increase the seed independent of us profit from them. That means in only a short time we are able to recoup our costs. So, the price of seed, by necessity, could be higher in the short length of time we are able to sell them without competition.

Mr. MATHIAS. I am still not clear. You would sell so many thousand pounds to a farmer. If this bill becomes law, then, this farmer could not keep this seed and grow his own seed for years to come?

Dr. NEELY. Not without an arrangement with us. He could sow his own seed but he could not sell it.

Mr. MATHIAS. Say the second year, then, he would keep the seed for his own use—would he have to pay a royalty on that?

Dr. NEELY. No, as long as he plants it on his own premises for his own use. The law clearly states that he will not be liable for infringement even without an arrangement with the breeder.

Mr. MATHIAS. So initially the cost would be more to the farmer, the the first year?

Dr. NEELY. In comparison to what?

Mr. MATHIAS. In comparison to the cost of it without the royalty.

Dr. NEELY. If he were going to increase his seed that is possible; yes, sir.

Mr. MATHIAS. You don't anticipate that the royalty would be so high that—

Dr. NEELY. No, sir. The word "reasonable" has been regularly used in words and in serious intent.

Mr. PURCELL. Doctor, to follow up what Mr. Mathias was inquiring about—first, when you sell seed to a farmer now you try to sell it at a price you can make some money, do you not?

Dr. NEELY. That is right.

Mr. PURCELL. There is no royalty connected with your selling your seed to farmer A, Smith, Jones, or anybody else. If he sells seed that he grew, but because of your variety it was a valuable seed, you would expect, then, to get a reasonable royalty, as we will call it, because of his using your product to become commercial wheat for seed purposes?

Dr. NEELY. That is right.

Mr. PURCELL. I wanted that clear.

I do not think I am arguing with Mr. Mathias, but it seems to me that even if—and I do not think it will—the seeds of farmers 2, 3, and

4, after they buy your seed variety from farmer No. 1, if they are a little higher, that is what the whole thing is about. I want to be sure that at least I am on the record as saying that if you have developed a seed it would be just like getting a patent on a mousetrap. As far as I am concerned if it is your mousetrap everybody who sells it should have to pay you a little money for it.

Dr. NEELY. That is right.

Mr. PURCELL. That is what we are getting at here.

Mr. KLEPPE. If the gentleman would yield for one observation. It seems to me that the spirit of competition is what comes into play here. If you develop a better seed and the farmers want to buy it, fine, they will pay a little higher price for it. If they will not pay that price for it they will not buy it, so we are getting right back to the spirit of competition which is really the basis for our whole system of life in the United States. I think that is what is involved here.

I think Mr. Mathias asked a very leading question about how this will move from the standpoint of protection between farmer and farmer.

I thank the gentleman for yielding.

Mr. MATHIAS. I was not objecting to it. I was curious regarding the mechanism and how it worked.

Mr. PURCELL. That is why I did not think we were arguing about it.

If we have time I would like to ask a question.

Mr. DE LA GARZA. Let us continue with the other witnesses. If you have a question of a witness who already has testified and he is available we will be happy to ask him to return.

Thank you very much, Dr. Neely.

We will now hear from Mr. Paul C. Stark.

STATEMENT OF PAUL C. STARK, SENIOR VICE PRESIDENT, STARK BROTHERS NURSERIES, LOUISIANA, MO.

Mr. STARK. Mr. Chairman, I am here to testify in favor of the passage of H.R. 13631 and I hope Congress will pass it this session. However, I wish to further state that I am definitely opposed to combining this proposed Plant Variety Protection Act for sexually reproduced plants with the successful 40-year-old Plant Patent amendment to the patent law covering asexually reproduced plants. This has been discussed off and on for 4 years. This is the first time we have all gotten together and I believe this is the time to act.

I am speaking personally in support of this bill based on my continual observation and connection with this over-all problem and situation. It has been difficult in the past 40 years to get the various interests, public and private, to agree on a program of action that will fit the characteristics of sexually reproduced plants.

In the past several years, many dedicated individuals, committees, and agencies have worked and cooperated in bringing this proposed legislation to its present form. The seed trade, the U.S. Department of Agriculture, State Agricultural Experiment Stations, and many others have cooperated in achieving this result.

It has been 40 years since the plant patent bill for asexually reproduced plants was passed and it has been in successful operation all these years.

The present interested groups do not want to further delay the encouragement for improving sexually reproduced plants.

This bill, H.R. 13631, is the result of long careful study and planning by many different groups and agencies, both private and governmental—all desiring the passage of legislation to give this encouragement and protection to the plant breeders and plant discoverers of new improved plants.

The benefit of this legislation to the general public in coming years is emphasized by the added food and plant product requirements of our increasing national and world population.

This bill will further stimulate industry to participate in research in improved types of sexually reproduced plants for the benefit and happiness of the public.

Mr. MATHIAS. A statement to Mr. Stark. I have had the pleasure of eating some of his real fine apples. You do a great job in developing apples. They are great.

Mr. STARK. Thank you.

Mr. DE LA GARZA. We will be happy to hear from Mr. Victor Renner.

STATEMENT OF VICTOR A. RENNER, REPRESENTING THE O. M. SCOTT & SONS CO., MARYSVILLE, OHIO

Mr. RENNER. My name is Victor A. Renner, I represent the O. M. Scott & Sons Co., Marysville, Ohio. Presently I am serving in the capacity of consultant. Prior to 1970, I served the company for 25 years in the area of research and development; the last 10 years as vice president and director of research.

Our company supports H.R. 13631. We are in the business of serving the needs of the American public in developing and maintaining lawn and turf areas. Green lawns and turf areas are recognized for their contribution to the enjoyment of all in providing esthetic beauty as well as a carpet for outdoor recreation of all types.

In our own research and development work, the patent system has been recognized as essential to securing the results of efforts devoted to research and development for meaningful utilization by the company. Without the incentive of securing rights for a limited time, it questionable whether efforts devoted to research and development would have been as extensive as they have been in the past 25 years.

As a result of progress in the science and technology of development of plants of all kinds, more and more effort has been devoted to developing new strains of grass and other ground covers by genetic modification. Unlike developments in the chemical or mechanical fields, an adequate system for securing rights of new developments has not been available. As a result of our own corporate research and development endeavors as well as those of others in this area, we visualize that benefits to the American public will be in the form of plants which will provide better performance with greater efficiency.

Recent concern on the quality of our environment has focused attention on the potentials of plants, including turfgrasses and ground covers, to contribute to improvement of our environment. The control of erosion, as well as pollution, by establishment of a thick cover of grasses is self-evident to those having observed erosion in the form of clay and silt particles polluting our streams. Recent investigations have shown that turfgrasses also tend to stabilize plant

nutrients to a much higher degree than other crops. Plant nutrients such as nitrogen and phosphorus have been suspected of upsetting the balance in our streams and lakes.

Of even greater benefit, the regenerative capacity of grasses and plants on our atmosphere has heretofore not been considered of significance. With the concern of atmospheric pollution, an assessment of the potential capacity for plants to regenerate oxygen and to purify the atmosphere by removal of toxic substances emitted in our modern-day living is assuming ever greater importance.

As more and more emphasis will be placed on the quality of life in America, the need for more green areas, including turf grasses and plants of all kinds, will increase. Development of ever better, more efficient plants, both with respect to maintenance as well as effectiveness in all areas of performance, will be required.

In the long-range future, we visualize development of plants that will have all the desirable plant attributes—esthetic value, serve as a living carpet or cover, aid in pollution control, serve as an air or atmosphere regenerator and serve as a source of food—for use outdoors as well as in enclosed systems for human habitation.

It is our position that the development of these benefits will be enhanced by providing the proper incentive in the form of limited rights to industry and others as provided in the bill.

Mr. DE LA GARZA. Thank you very much, sir.

Questions?

(No response.)

Mr. DE LA GARZA. I appreciate very much your contribution. You made a point that I have been trying to impress on people regarding this pollution business—that the administration, the Senators, and everyone else who has been interested in pollution, and I do not question their sincerity about it, but everyone is going to the more popular aspects. Everyone is worried about the atmosphere, and even in the President's message to Congress he hardly touched soil erosion and ground cover. The basis of the pollution of many areas is because of the deterioration of the soil. I am very happy to see someone thinking along the same lines as I am and not going to the more spectacular aspects of pollution.

Mr. RENNER. Thank you.

Mr. DE LA GARZA. We will now be happy to hear from Mr. George Rea Walker.

STATEMENT OF GEORGE REA WALKER, PRESIDENT OF THE STONEVILLE PEDIGREED SEED CO., STONEVILLE, MISS.

Mr. WALKER. Thank you, Mr. Chairman. My remarks are rather short so I shall proceed with my statement.

My name is George Rea Walker. I am president of Stoneville Pedigreed Seed Co., Stoneville, Miss., and our company developed cotton varieties planted on over 25 percent of the U.S. acreage and 85 percent in the lower Rio Grande Valley of Texas.

We strongly support H.R. 13631 and related bills which will provide plant variety protection to the developers of new varieties.

We support this legislation because it will stimulate private plant breeding, give farmers a wider choice of varieties which will be better in yield and quality and of greater importance, will improve the

competitive position of U.S. farm products particularly cotton in world markets.

Our firm maintains one of the major cotton breeding research programs in the United States, however, it is relatively small when compared to research programs of large companies involved in a wide range of crop varieties. In our company if legal plant variety protection afforded by this legislation becomes a reality, we will immediately increase our research expenditures for cotton by more than 50 percent. We will further increase our research expenditures if the fruits of this expanded research program finds acceptance in the marketplace.

We would also expand our plant breeding research programs to include other crops grown in the areas in which our seed are now distributed. The crop which would receive first attention would be soybeans.

We strongly support this legislation since it will improve the lot of the American farmer and improve the overall position of our total agricultural economy. We strongly support this legislation and appreciate this opportunity of presenting this testimony.

Mr. DE LA GARZA. Questions of Mr. Walker?

(No response.)

Mr. DE LA GARZA. Thank you very much, Mr. Walker. We are happy to have had you.

We will now be pleased to hear from Dr. Walter O. Scott.

STATEMENT OF DR. WALTER O. SCOTT, ILLINOIS CROP IMPROVEMENT ASSOCIATION, URBANA, ILL.

Dr. SCOTT. Mr. Chairman and members of the committee, I appreciate the opportunity to express the support of the Association of Official Seed Certifying Agencies for the principle of plant variety protection as proposed in H.R. 13631 and related bills.

The AOSCA is an organization of seed certifying agencies. There are 43 member agencies in the United States. In most States the College of Agriculture, the Agricultural Experiment Station or the Extension Service is responsible for the seed certification program. In many of these States a grower organization is delegated the responsibility to carry on the program. In a few States a division or a section of the State Department of Agriculture is responsible for seed certification. Some of these also have active grower organizations that aid in the promotion of good seed.

In 1969 about 24,000 certified seed growers produced certified seed on over 2 million acres. Many of the certification agencies have two classes of membership, active and associate. Active members are those that are actively engaged in the certification of seed and associate are those not directly involved in seed certification but who support the principle and promote the use of good seed. There were almost 9,000 associate members among the 43 agencies in 1968.

Seed certification, briefly defined, involves the use of seed production and processing standards in combination with a system of recordkeeping, field inspections, and seed inspection to protect the genetic purity and maintain the genetic identity of crop varieties.

In the absence of this legislation anyone may legally reproduce and sell seed of varieties of the seed propagated crops. Some will argue

that this is not an undesirable situation. However, as long as this situation exists, the cost of variety development in most self-pollinated crops will have to be borne by the U.S. taxpayer because private industry has little opportunity to protect and recover its research investment. In addition the number of people working in variety development in the self-pollinated crops will be confined to the number that can be committed to this type of research in public institutions such as the U.S.D.A. and at our land-grant agricultural colleges.

This legislation will provide private industry with the opportunity to greatly increase its commitment of money and personnel to variety development. Industry will accept this opportunity and American agriculture is sure to benefit.

One of the important features of this bill is that it provides a choice in methods of protecting new varieties. The developer and/or owner may elect to exclude others from reproducing and selling his variety. If he elects to do this, the protection of the right to exclude others is his responsibility through the civil courts.

On the other hand the owner may elect to specify that only certified seed of his variety may be sold in the United States. One of the advantages of this form of protection is that violations involving seed moving in interstate commerce would be criminal acts and subject to prosecution by the Federal Government.

Many people associated with variety development and the commercial seed industry have felt that the seed certification form of protection is desirable because the financial burden of prosecuting violators in the civil courts could be a serious deterrent to the continued involvement of individuals or small relatively poorly financed plant breeding organizations in variety development.

Triumph wheat is one of the notable examples of the contribution of an individual who was interested in variety development as a hobby or avocation. Triumph was developed by a farmer in Oklahoma, the late Joseph Danne. At one time it was grown on more acres than any other wheat variety in the United States. Examples of this type are not numerous but there have been enough to raise the concern that the benefits of plant variety protection should be convenient and available to all who engage in the development of varieties. The concern has been expressed that the efforts of these people would be lost if they were forced to prosecute through the civil courts or to assign their new variety to a large organization capable of financing such action.

American agriculture needs an unending succession of new crop varieties because the hazards to crop production are constantly changing. For instance, as the result of natural hybridization of some fungus disease, new races of the disease develop. A variety of wheat which is resistant to the common races of stem rust when first released may be susceptible to new races which appear later. Insects often develop an appetite for a crop. Most of the insects that now feed on and damage soybeans were originally pests on other crops or weeds. Therefore, the need for new varieties is never satisfied.

By encouraging private industry to increase its commitment, plant variety protection will help assure that the improvement of crop varieties will keep pace with ever changing pests and needs.

Thank you for the opportunity to testify in support of this legislation.

Mr. DE LA GARZA. Thank you very much, Doctor.

If there are no questions, we appreciate your being here, sir.
Now we will be pleased to hear from Dr. Henry R. Fortmann.

STATEMENT OF DR. HENRY R. FORTMANN, REGIONAL COORDINATOR, NORTHEAST ASSOCIATION OF AGRICULTURAL EXPERIMENT STATIONS, AND CHAIRMAN, SEED POLICY SUBCOMMITTEE, EXPERIMENT STATION COMMITTEE ON POLICY, PENNSYLVANIA STATE UNIVERSITY

Dr. FORTMANN. Mr. Chairman, I am Henry Fortmann. I am the regional coordinator for the 14 State agricultural experiment stations in the 12 Northeastern States. For the last 5 years I have had the privilege of being the chairman of the Seed Policy Subcommittee of the Experiment Stations Committee on Organization and Policy.

I have a prepared statement here. I would like to pull out about three points and make them for you.

First of all, the State plant breeders and those concerned with seed multiplication and distribution have had a very excellent opportunity to review this proposed legislation for the last 2 years. We have had the subcommittee, and the members are listed in my statement, and we have held regional meetings attended by the State plant breeders, some USDA plant breeders, seed certification breeders, and anyone else who has been attending, and as a result of this series of meetings I think the proposed legislation has been changed considerably since its inception.

I might list the points where we have had some questions.

- (1) This can be voluntary.
- (2) The system would be open to both public and private plant breeders.
- (3) The system will not unduly restrict the flow of germplasm.
- (4) The system provides for Variety Review Boards.
- (5) The system provides for exemption in order to expedite plant breeding or other bona fide research.
- (6) Provision be made for an individual to save seed and grow the resulting variety for his own use.
- (7) Provision is made for the possible use of certification and limited generations as a part of the variety protection system.

On May 1, 1969, ESCOP approved, in principle, the proposals for variety protection now encompassed in H.R. 13631. This constitutes endorsement of the proposal by the 53 State agricultural experiment stations of the United States.

I am most appreciative for the opportunity of presenting this statement to you today.

That completes my remarks, Mr. Chairman.

Mr. DE LA GARZA. Thank you very much, sir.

Questions?

(No response.)

Mr. DE LA GARZA. Dr. Fortmann, let me ask a question as to what, from your perusal of the legislation, would be your opinion regarding the legal status of producers of seed which is now in the public domain and which is being used now.

Dr. FORTMANN. It is my understanding that these would not be eligible for some company or even the developer and experiment

station or public agency to ask for protection. I think the 1-year provision would be in effect.

Mr. DE LA GARZA. Then it is your opinion that this legislation would commence as of the passage of the legislation and afford the protection within the legislation but it would not go back and pick up anything covered earlier? For example, Hampton 266.

Dr. FORTMANN. I will not prejudge the legal aspects of this. This has been my understanding. Existing varieties, Granger alfalfa, for example, would not be subject to protection. This was a similar question I asked. This would be my understanding.

Mr. DE LA GARZA. I might ask previous witnesses if this is their impression of the legislation.

Mr. SOUTHERLAND. It is my understanding it would go 1 year from date of enactment. In other words, it would not be retroactive 5 years, for example, but it could go back 1 year.

Mr. KLEPPE. Is that the same with regard to any variety developed a year previous to the enactment of this act, that it could be covered?

Mr. SOUTHERLAND. One year.

Mr. KLEPPE. From the enactment of this act?

Mr. SOUTHERLAND. In effect our counsel says it is 1 year of public use.

Mr. KLEPPE. One year of public use. Is it measured from the date of enactment of this bill?

Mr. SOUTHERLAND. Yes, sir.

Mr. KLEPPE. Not from the development of it but from the public use of it. In other words, it would be measured by the first sale of it, I suspect. That would be considered public use. Is that correct?

Mr. ROBERTSON. The same provision there will be 10 years from now—that the application must be filed within 1 year of what we may briefly call public use. In the case of those things which have been used 1 day less than 1 year the application would have to be filed the day after the enactment of the act or the year would be gone.

Mr. PORTER. I am Dale Porter, legal counsel for Pioneer Hybrid Corn Co. One of the reasons we needed that provision in this act is so that companies having new varieties to release during the pendency of this proposal would not hold those varieties up in order to get protection subsequently but would be free to release them while this is under consideration.

It would be very undesirable for a company to sit on a new variety and not release it today in anticipation that this might become law in the future.

I think we need that in there for that reason.

Mr. DE LA GARZA. We appreciate your contribution. I do not suspect there is anyone here opposed to the legislation. I think all of us here now agree that it shall not go back to time immemorial but we shall set a cutoff date to cover from now on with the possible leeway of a year or so.

Thank you, Dr. Fortmann.

Mr. KLEPPE. He is reciting the mood of Congress.

Mr. KLEIN. I am Andrew Klein, of Philadelphia. I sat as chairman, some years, of the National Coordinating Committee on the Patent System. I am now chairman of a subcommittee of the American Bar Association. We reviewed this bill and we presented recommendations to the bar association which is meeting in St. Louis in August.

We have completed our work and we have sent in our report but it is not the report which has been adopted by the patent section nor by the American Bar Association. It does consider several rather serious problems which have been raised by H.R. 13631, and if it would be of any assistance to this committee I would be very glad to mention these briefly although I must admit I knew there would be a hearing only yesterday, and I discovered it by accident because of a telephone call.

Mr. DE LA GARZA. Let us continue with the scheduled witnesses and then we will be happy to hear from you.

The next witness will be Mr. Ritchie Smith.

**STATEMENT OF J. RITCHIE SMITH, ASSISTANT DIRECTOR OF
RESEARCH, NATIONAL COTTON COUNCIL, MEMPHIS, TENN.**

Mr. SMITH. Thank you, Mr. Chairman and gentlemen.

My name is J. Ritchie Smith and I am assistant director of research for the National Cotton Council of America. The council, with headquarters in Memphis, Tenn., is the central organization of the raw cotton industry, representing cotton producers, ginner, merchants, warehousemen, cooperatives, spinners, and cottonseed crushers.

At their annual meeting in Atlanta last February, our delegates unanimously adopted a policy that the council should:

Recognize the necessity for improving varieties and the quality of cotton planting seed; support legislation to establish an effective, equitable, and workable system of voluntary plant variety protection, provided such system would allow any farmer the right to reproduce seed for his own planting, and would permit free interchange and research use of information, varieties, and other breeding material among plant breeders and other scientists; and continue to cooperate with the Joint Cotton Breeding Policy Committee in efforts to improve variety testing and the breeding, release and distribution of cotton planting seed which will best serve the interest of farmers and the entire cotton industry.

In pursuance of this policy the council supports the bill before your committee, H.R. 13631, with one suggested change. The bill if enacted will provide needed legal protection for the developers of all new plant varieties.

Plant breeding is fundamental to the future welfare of cotton. In its battle against manmade fibers, cotton must compete in quality and in price. Plant breeding is one of the vital keys to strengthening cotton's competitive position in both of these areas. It can give us new varieties which offer higher quality, value, and performance to our mill customers—and to the ultimate consumers. It also can lower production costs—and strengthen the farmer's ability to compete in price—by developing varieties which offer higher yields, better disease resistance, and other improvements which reduce unit costs.

Cotton urgently needs more attention and investment from plant breeders if it is to meet the test of modern competition. Yet the plain fact is that cotton is getting less attention—rather than more attention—from breeders. The reason is obvious: Commercial breeders are losing money on cotton. They have no incentive to put heavy investments into cotton because they are denied the kind of legal protection of their new developments that has long been accorded to other innovators and inventors—including those who develop plants which are reproduced by asexual means.

We recently canvassed the commercial cotton breeding firms to ascertain their expenditures on cotton varietal development and what they expected to be spending in 1975, assuming cotton acreage would remain about as it is now. Ten firms, which account for varieties making up 65 percent of the acreage, reported that their expenditures would at least double if a variety protection system is established. On the other hand, the survey also revealed that expenditures would remain at today's already inadequate level or be lower if the lack of protection continues. Our contacts have also confirmed that the establishment of a variety protection system would bring other firms into the cotton breeding field.

A cotton breeder may devote 10 to 12 years, or more, to development of a new variety. He may spend several hundred thousand dollars—or perhaps a million—on that variety. Then, as soon as he puts his new variety on the market, anyone can come along and use the breeder's seed to reproduce and commercialize on the variety—without making any direct investment in the varietal development process.

Unless this situation is corrected, private investment in cotton plant breeding is assuredly on the wane. Those breeders who are continuing to put heavy emphasis on cotton are doing so in the hope and expectation that they will be provided reasonable legal protection for their investment, and be afforded the opportunity to make a return on that investment.

With the advent of hybrids in corn and grain sorghum—which gave breeders of these plants a built-in genetic protection for their efforts—we have seen vast increases in expenditure for varietal development on these crops by private firms. It has been good business for the firms involved, but producers of these crops and the general public have been the principal beneficiaries. Unfortunately, the hybrid principle cannot be made to work in many crops, including cotton, primarily because of difficulties in pollen transfer.

If we are to attract more private capital into cotton plant breeding, we must have a system of legal protection for the developers of plant varieties—whether reproduced asexually or sexually.

It is our opinion that H.R. 13631 would provide an effective, equitable, and workable system for variety protection. The system would be open and available to any originator or developer of a new plant variety. But it would be a voluntary system; that is, the developer of a variety would not be required to use the system. Those choosing to use the system, however, could secure protection grants only on the basis of proof of novelty, distinctness, uniformity, and stability of the variety. Responsibility for the enforcement or defense of the protection granted is placed on the owner of the right, at his expense. Specific provision is made to permit and foster the free-flow of information and breeding materials among plant scientists.

I want to emphasize also that the bill would allow any farmer the right to reproduce seed for his own planting. And, of course, a farmer or anyone else could sell planting seed of a protected variety without infringement with authority from the owner of the right.

The bill sets 17 years from the date of issue of the protection certificate as the term of variety protection. This term or an even longer one may be necessary for some kinds of crops. For cotton, however, the

term could be shortened—say to 10 or 12 years—without any adverse effects. We suggest, therefore, that different lengths of protection time for different kinds of plants or crops be established, based on specific requirements for each. In our view, this change would not alter the principles or intent of the bill, all of which we support, but it would make the bill sounder and more practical.

We, therefore, urge approval of H.R. 13631 with the suggested change. The bill would extend to all plant breeders protection rights that have long been provided in some form for other innovators. Experience makes it abundantly clear that such protection is in the public interest. The investment and competition it will generate among cotton plant breeders also will serve the best interests of producers and the entire American cotton industry.

Mr. Chairman, we appreciate the opportunity to present the council's views on this important matter.

Mr. DE LA GARZA. Thank you.

Questions?

Mr. KLEPPE. I have a very brief question. Asexually and sexually—what does that mean?

Mr. SMITH. Sexually is a plant reproduced by seed where you have pollen transfer, male and female parts of the plant, whereas asexually is produced in other ways, by cuttings, graftings, and that sort of reproduction.

Mr. MATHIAS. How many USDA research stations do you have doing research on cotton?

Mr. SMITH. I am not with the USDA, sir. I am with the National Cotton Council of America. It is a private cotton industry organization.

Mr. MATHIAS. You must be aware of the USDA facilities in your area?

Mr. SMITH. Yes, sir.

Mr. MATHIAS. Do you have any idea how many stations are in your area?

Mr. SMITH. There is at least one main station in each of the cotton-producing States engaged in cotton research and in genetics research. Many of these main stations also have branch experiment stations.

In addition, the USDA either has its own stations or cooperative work with the State experiment stations in practically every cotton belt State.

Mr. MATHIAS. You feel they have done an adequate job in developing cotton varieties?

Mr. SMITH. I think they have done a good job but I would not say adequate, sir, because we still lack the types of varieties necessary to get the yield, fiber quality, disease resistance, and other economic factors we need in order to cut costs and improve our quality and be able to compete more effectively.

Mr. MATHIAS. Is your home in Tennessee?

Mr. SMITH. Yes, sir; Memphis.

Mr. MATHIAS. How many varieties of cotton do you have in Tennessee?

Mr. SMITH. Probably about four varieties which make up the main part of the crop in Tennessee.

Mr. MATHIAS. Are some areas considered a one-variety area?

Mr. SMITH. Yes; there are. Many areas are one variety, that is on a voluntary basis where there is no legal requirement. The San Joaquin Valley in California is the only area where there is a legal requirement for it to be a one variety district.

Mr. MATHIAS. Do you feel through your company, you can improve on the four varieties in the State of Tennessee to produce more cotton with less wilt, and more yield?

Mr. SMITH. There would be different varieties. The effect of this bill would be that it would generate more investment, more interest, more attention in cotton plant breeding work, and as a consequence of this we would have generally improved cotton varieties available for farmers throughout the cotton belt, whether they are produced by private industry or public agency. That would be the net effect of this.

Mr. MATHIAS. I am for anything that would improve the plight of the cotton farmer and give him more money for his work.

Mr. SMITH. Thank you.

Mr. PURCELL. Why do you want a shorter period than 17 years for cotton?

Mr. SMITH. In the case of cotton many of our members feel—and this is primarily a technical matter—that for all practical purposes everybody understands that a cotton variety will not last 17 years even under the present system. There has been misunderstanding created on the part of some of our producer members that you would have a virtual lookup for 17 years on the cotton variety situation, and psychologically they are against this long period of time.

They have indicated there would be no opposition to the legislation if the period were made shorter. We feel, and I think most other technical experts feel, this would have no practical effect insofar as cotton is concerned. In the first place, most cotton varieties will deteriorate over a period of 4, 5, or 6 years time, either because of field contamination or mixtures in the gin or in other ways. A variety that is acceptable as of this year, for example, will probably be completely outdated short of 12 years from now. Therefore a protection on a variety that has no value would not be worth anything to anybody in the cotton industry.

Mr. PURCELL. But it will not hurt anything. On the other hand what would it hurt?

Mr. SMITH. It would hurt nothing.

Mr. PURCELL. Purely a psychological thing. I don't understand why they would object. If the variety has lived its life and yet it sells at the same price——

Mr. SMITH. I don't think it would hurt anything at all if it were left in at 17 years. We merely made this suggestion in order to satisfy some objection which had been made. As you say, it is primarily psychological.

Mr. PURCELL. You tell them it didn't impress one guy up here.

Mr. SMITH. I am glad to hear that, sir. I told them the same thing but they wouldn't accept my feeling on it.

Mr. DE LA GARZA. Thank you very much, Mr. Smith.

This concludes the list of the scheduled witnesses.

We will now be happy to hear from you, sir. Please identify yourself for the record.

**STATEMENT OF ANDREW R. KLEIN, SYNNESTVEDT & LECHNER,
PATENT LAWYERS, PHILADELPHIA, PA.**

Mr. KLEIN. I am Andrew R. Klein. I am with the firm of Synnestvedt & Lechner, patent lawyers, Philadelphia.

For many years I was chairman of the national coordinating committee on the Patent System. That was a committee appointed by the National Council of Patent Law Associations.

Mr. DE LA GARZA. For whom are you appearing today, sir?

Mr. KLEIN. I am appearing because I happen to be chairman of the committee of the American Bar Association patent section which was named to investigate and report on this bill, 13631, subcommittee E of committee 103 of the American Bar Association, section on trademark and copyright laws.

Mr. DE LA GARZA. You appear in behalf of them?

Mr. KLEIN. I am not authorized to appear at all.

Mr. DE LA GARZA. This is what I want to clear up. You appear then, as an individual?

Mr. KLEIN. Yes. This is with some qualifications.

Mr. DE LA GARZA. We appreciate that. I am sorry that you did not become aware of this meeting earlier. We posted the necessary number of notices as provided by the Rules of the House and you were missed. Notices were posted and published in accordance with the Rules of the House.

Please proceed.

Mr. KLEIN. The American Bar Association has several times, at least the patent section, expressed its enthusiasm for protection to the discoverers of new varieties of plants. I think this should be cleared before I go into the question of precisely what action the committee is taking at this time.

In 1966 the American Bar Association Patent Section passed a resolution favoring "where practical the application of the principles of the Patent System to all the agricultural arts, including all plants, sexual seed breeding, microorganisms, and animal husbandry." We believe in going the whole way.

In 1968 the patent section approved this principle retaining in the patent statute protection for plants and opposed the recommendation of the President's Commission that a separate form of protection for plants should be devised.

That same year there was another resolution by the patent section which favored broadening the existing plant patent provisions so as to include sexually as well as asexually reproduced plants.

That same year the American Bar Association expressed a wish to delete language from the present statute which excludes protection for tuber-propagated plants.

Again that year the patent section approved by an overwhelming vote the provisions of the McClellan bill, S. 1246, with respect to patent protection for micro-organisms. This is a very practical, down-to-earth approach to the patenting of micro-organisms which requires that one who develops a new micro-organism place a deposit of that culture in an approved depository and maintain it, and its validity is conditioned upon his continuing to maintain it. This is a perfectly practical approach to the plant problem and it is involved in this bill of Mr. Purcell. If you make a deposit of your plant in an approved

nursery you have to maintain it. You have to maintain the available seed if it is the seed you are patenting.

The difficulty which confronts the patent section is the recognition of a significant reason for not protecting these new varieties of plants under the patent system. There is disagreement in our committee as to whether this is good or bad. There is hot debate about it and it is coming up in St. Louis as a matter of philosophical divergence of view. It needs exploration because we have a huge background of case laws in the patent field which would shed much light on problems which are bound to arise in trying to protect exclusive rights in a new plant variety.

We have an area of overlap which is very distressing, and that is the plants patents which are based on asexually reproduced plants covered under the Patent Law as such but when we begin dealing with our neighbors overseas we find that they have gone into a convention, an international union, referred to as the Paris Agreement on the Protection of New Varieties of Plants, 1961. This was drawn up after about 3 weeks of concentrated work by about 12 nations. It was presented in draft form and signed by all of these countries and it was subject to ratification. It was ratified by four countries as being provided that it would come into effect as soon as three had ratified. The fourth came within a month of the third, so in effect it was simultaneous.

The countries which subscribed to this treaty are Great Britain, West Germany, Denmark, and Holland. France has just enacted a law which has not yet been given an effective date but the text of the law has been agreed to by the Senate and House of France. It will be promulgated, which qualifies France to join this convention.

All of these national laws and the convention itself provides that when the country implements the requirement of the treaty by providing protection for a species, and this must be done bit by bit because you cannot handle a whole bunch of new plant varieties, new genuses, and new species by simultaneous enactment of provisions—all the countries recognize this has to be done by stages. However, as soon as any variety is provided for under the New Varieties Act, all other forms of protection cease. Patents we have in the United States are valuable to the people who have taken them out. Many businesses are flourishing on the basis of new variety of roses, peaches, apples, and a whole bunch of other things like that. These are valuable things and they will be lost.

We have the option, as I understand it, to stick to a Patent System or to stick to the new varieties system, but we cannot have both. In Germany now you can no longer patent a variety of rose that is not patentable subject matter under the German New Varieties Act because in Germany they have adopted a system of regulations and criteria by which new varieties of roses are measured under the Plant Breeders Act, and you can no longer obtain a patent in Germany on a rose.

This is a very distressing thing to very large rose growers in this country. They are being robbed blind in continental Europe. The budded stocks they have selected after years of patient work is being bought on the open market, smuggled in Europe and sold hand over fist in all the countries which have subscribed to this convention because in all the countries the same thing applies. This will be equally

distressing with some of the new varieties of fruit. In other words, we have to consider correlating the terminology of our legislative proposals with the requirements of the International Convention.

For one illustration, the minimum term under that treaty is 18 years from the date of grant. We are proposing to make it 17. We are excluding ourselves from an opportunity of reciprocating. My point is that we have to think about this very carefully as to mechanical terminology. It is a valuable thing. Everybody I know of is in favor of protecting a man who creates something new. He should have the right to it. We think it should be accorded to him under the Patent System, or perhaps under a new system. Perhaps this bill is the best system. We will argue that out in St. Louis.

MR. DE LA GARZA. Thank you very much, Mr. Klein. You have made a most valuable contribution to this hearing.

We will instruct our very able counsel to study this matter very cautiously and wherever possible we will coordinate with international agreements and conventions. Our counsel is already studying parts of your recommendation but we sincerely appreciate your being here in further cautioning us of the adverse effects we might run into if we do not consider other nations involved.

We are deeply grateful to you for being here and we will instruct our counsel to make a thorough study of the matters which you have brought up this morning.

MR. KLEIN. I will be delighted to be of any assistance if needed.

MR. DE LA GARZA. I am sure if we have your name and address counsel will be delighted to ask your assistance where necessary.

(Mr. Klein later submitted the following letter:)

SYNNESTVEDT & LECHNER,
Philadelphia, Pa., June 16, 1970.

In re H.R. 13631 (Purcell).

HON. ELIGIO DE LA GARZA,
Committee on Agriculture,
House of Representatives,
Washington, D.C.

SIR: Let me first express my very real thanks for the chance you gave me to discuss this bill. I am afraid that my comments, being quite unpremeditated, were disorganized. I have tried to bring the subject into sharper focus, in the comments which follow.

The most serious problem, it seems to me, arises from the fact that if we enact H.R. 13631 we shall either have to repeal the sections of the patent law which provide for the issuance of plant patents, or we shall have to forego any possibility of subscribing to the International Convention for the Protection of New Varieties of Plants, which was signed in Paris on December 2, 1961, but which did not come into force until August 10, 1968. That treaty provides, in Article 2, that any subscribing country may provide protection for any genus or species under an act to protect plant breeders' rights, or under its patent laws, but it cannot offer protection for the same genus under both systems. The treaty also provides that each ratifying country must first adopt provisions establishing protection for at least five of the genera specified in the treaty, and must undertake to provide protection for the remaining genera, within a stated time schedule, so calculated that within eight years all of the genera named in the treaty must have been provided for. As I read this document, and as the other countries apparently construe it, if we afford protection for any genera under the plant breeders' act, we shall have to eliminate patent protection for each genus so protected. After eight years, no more plant patents could be granted, for all genera specified in the treaty would have been assimilated to the Breeders' Rights Act.

The only way that I can see to establish reciprocity with the treaty nations, and thereby qualify for membership in the treaty group, is to amend the patent act to include all genera, as rapidly as regulations can be adopted to specify controlling characteristics, or else abandon the concept of any protection at all for plants under the patent system. Even if we decide to adopt a plant breeders' act establishing a form of protection which is outside the patent system, it is by no means clear (a) that we shall qualify for membership in the treaty organization, or (b) that we should accept membership at the expense of certain purely fundamental characteristics of our own system of protecting exclusive rights. To illustrate this point:

The treaty provides that protection must endure for a minimum of fifteen years from the grant of the certificate. Where the variety protected, however, is a vine, a fruit tree, a forest tree, or ornamental shrub, the minimum term is eighteen years. The establishment of a seventeen-year term in accordance with H.R. 13631, would automatically disqualify us for reciprocity under this section of the treaty. This provision is found in Article 8 of the Convention.

Each ratifying country must adopt legislation which requires that a "denomination" be supplied for each new variety. That "denomination" is intended to be the generic name for the variety, and its use is mandatory in connection with the advertising or selling of goods of that variety. In addition to the "denomination", the owner of a breeder's rights certificate may, if he wishes, also use a trademark. Twenty words are in H.R. 13631 dealing with this matter, although it occupies many paragraphs within the treaty.

The treaty requires an examination of each request for a certificate of protection, and states that the ratifying countries may require the applicant to produce documents, propagating material, or seed, as may be needed, to establish the characteristics of the new variety and its differences over what was known before. Since the treaty does not require that the depository be a public depository or a certified depository, it may be possible to satisfy the apprehensions of the seed growers in this country by permitting national associations of growers to establish semi-private or semi-public fields and granaries.

There are numerous other points of detail which are spelled out in the treaty, and which I would be glad to amplify if you so desire.

I would like to offer one illustration of the deprivation of right which has arisen through the implementation of this treaty of Paris, 1961. For many years our citizens have been obtaining in West Germany patents on new varieties of plants which are based on patent applications filed in the United States. Under the International Convention of 1883 for the Protection of Industrial Property, the major countries of the world have granted reciprocal rights of priority to nationals of other member states, and the priority of United States plant patent applications has been extended to the corresponding German applications without question. Since Germany enacted its plant varieties act, in the early Summer of 1968, it has refused to grant any priority rights to nationals of this country on the basis of cases filed in the United States.

The same situation will shortly prevail in France, and probably prevails already in Denmark and The Netherlands, although I have not inquired about this.

The government of the United States has made diplomatic protest to the government of the West German Republic against the unilateral abrogation of its obligations under the International Convention for the Protection of Industrial Property. No reply has been received, so far as I know. A German lawyer told me, however, that he sees no basis for objection by the United States, since the treaty referred to expressly provides that a member nation may refuse patent protection to an applicant from another member nation, with respect to subject matter which is not patentable under the laws of the country which refuses the right.

To illustrate: since the Italian law forbids the granting of a patent with respect to any pharmaceutical product, no violation of the treaty obligation occurs when Italy refuses to grant a patent on a new pharmaceutical product to a manufacturer of such product in this country, even though that manufacturer had done all things requisite to qualify his United States application for reciprocal treatment in Italy under the International Convention for the Protection of Industrial Property.

Germany has, in effect, decided that new varieties of roses shall no longer constitute patentable subject matter. Under the circumstances, the United States grower cannot obtain a patent in West Germany for the new variety which he has developed. Most unfortunately, he cannot obtain a certificate entitling him to breeder's rights, either, for the issuance of such certificates is limited, in accordance with the treaty itself, to nationals of the member countries, and to enterprises having their place of business in a member country.

As I pointed out, in the course of my remarks, the Section on Patent, Trademark and Copyright Law of the American Bar Association firmly endorses the principle of protection for those who discover or invent new varieties of plants, whether this is accomplished asexually or not. Past action by the Section is as follows:

In 1966, the Section passed a resolution favoring, "where practical, the application of the principles of the patent system to all the agricultural arts (including all plants, sexual seed breeding, micro-organisms, and animal husbandry)".

In 1968, the Section expressed its approval, in principle, of retaining in the patent statute protection for plants, and opposed the recommendation of the President's Commission that a separate form of protection for plants should be devised.

In 1969, the Section passed a resolution favoring legislation to include sexually as well as asexually reproduced plants. That same year the Section also favored deleting language in the present statute which excludes protection for tuber-propagated plants. Still further, in 1969, the Section approved by an overwhelming vote a resolution relating to the provisions of McLellan Bill S. 2756 (91st Congress), with respect to patent protection for microorganisms.

When H.R. 13631 was introduced, it was referred to Committee 103, and Subcommittee E, of that major committee, was given the task of evaluating Mr. Purcell's proposals. Several of us met in Washington to discuss the matter, and quite a little correspondence exchanged hands. As a result, a committee report has been framed which will be presented to the Patent Section at its annual meeting in St. Louis in August of this year. Several of the subcommittee differ from the majority report, and I think it quite possible that an interesting debate will take place. The majority proposes the following resolutions:

"Resolved, that the Section of Patent, Trademark and Copyright Law reaffirms its position favoring the principle that protection to the discoverers of new varieties of plants, including tuber propagated plants and plants reproducible from seed, should be provided within the ambit of the patent system; Specifically, the Section of Patent, Trademark and Copyright Law disapproves H.R. 13631 (Purcell), 91st Congress, which would establish a system under the aegis of the Department of Agriculture for securing exclusive rights to the discoverers of new varieties of plants not asexually reproduced."

"Resolved, that the Section of Patent, Trademark and Copyright Law disapproves in principle those provisions of H.R. 13631 (Purcell, 91st Congress, relating to sexually reproduced plants) which would mandate the granting of compulsory licenses and which would preserve an administrative remedy against any Certificate of Plant Variety Protection for a period of five years after its issuance, instead of requiring the institution of judicial proceedings."

There are many questions which come to mind in considering the specific divisions of H.R. 13631 and I have therefor prepared a commentary on the Bill which is devoted expressly to that point. I am attaching a copy for your attention, if you wish to consider detailed comment at this stage in the proceedings.

Respectfully,

ANDREW R. KLEIN.

Enclosure.

COMMENTARY BY ANDREW R. KLEIN ON SELECTED SECTIONS OF H.R. 13631 (PURCELL)
91ST CONGRESS

Certain basic philosophical problems are presented by this legislation. One of these is whether it is necessary to duplicate, in the Department of Agriculture, the equipment, housing facilities and organization presently available in the Department of Commerce, for the purpose of protecting plant breeders' rights. One man has, most of the time, been enough to handle all of the prosecution of the plant patent cases in the Patent Office, for over forty years. One reason he could do this is that all of the facilities were already there—floor space, secretarial help, clerical help, and all the rest of it. But no such organization exists in the Department of Agriculture. One would have to be created. In forty years of operation only about three thousand plant patents have been issued. Is there any reason to suppose that new varieties of seeds will generate a greater number of certificates? Is it economically justifiable to invest so much money for so small return?

Many who have questioned the desirability of providing protection for new varieties of plants and seeds under the patent act have done so on the ground that

it is practically impossible to explain in words the long and tedious process of repeated crossing and selection by which new varieties are made. In other words, they feel that if it is to be protected by a patent it must be reinforced by an "enabling" disclosure. This is not necessarily true at all. For the first hundred years of our Patent Office operations it was required that the applicant supply a working model. This was regarded as entirely sufficient to supply the real need, namely, to make available in a public place something from which the inventor's contribution could be surely duplicated when his patent had expired. Proposals for amendment of the patent law for the deposit of cultures containing new forms of micro-organisms have been approved without a moment's hesitation by the bar. Is it so difficult to establish a depository for the safe storage of new varieties of seed?

Others who have hesitated to bring protection of new varieties under the aegis of the patent system have taken the view that unless the result can be reproduced with mathematical accuracy, it can hardly be patentable subject matter. This is not necessarily the case at all. Many quantity production techniques do not produce identical articles. All that is necessary is that the deviations from the norm should be within the range of normal use and operation. This is expressly provided in some foreign laws respecting new varieties of seeds, which recognize that deviations occur with respect to every variety, but so long as those deviations are within commercially acceptable limits for the specific variety under consideration, the "certainty" requirements of the statutory system are in fact fulfilled.

As to the Bill itself:

Chapter 1

Sections 1-11 parallel corresponding sections in Patent Law, except for Section 7, which provides for setting up a Plant Variety Protection Board instead of a Board of Appeals. Several men question the desirability of appointing on such a Board any members of the trade. It is not regarded as wise to permit a man to sit in judgment on his own case. It may be even less wise to permit him to sit in judgment in determining what rights are to be granted to one of his competitors.

Chapter 2

Sections 21-27 are from the Patent Law. Sections 23 and 24 relate to the taking of testimony by deposition in contested cases. Although testimony is frequently required in trademark oppositions, and in patent interferences, the questions which require decision with respect to the priority of applications for breeders' rights certificates would seem to be relatively quite direct and simple, and possibly better adapted to procedures involving confrontation in open court. Some have suggested that no proceeding be instituted in the Plant Variety Protection Office which contemplates that testimony be taken.

Chapter 3

Section 31—The fee schedule appears to be somewhat more reasonable and less difficult to calculate than that provided in the patent act, and this is a boon.

Chapter 4

Section 41, "Definitions"—Subsection (g) seems self-contradictory.

Section 42—Subsection (2) of this section, which permits the introduction of proofs respecting acts done abroad, should raise the same tremendous storm as followed the proposals offered in the Patent Reform Bill—S. 1042—to repeal Section 104 of the patent law and permit proof of acts performed abroad. Efforts to prove that something was or was not done in a foreign country, without benefit of our discovery rules, and without our ready enforcement procedures, have proved to be wholly frustrating to the patent bar. It will probably be even more difficult to discover the facts where perishable plants are involved.

Subsection (3) invalidates a United States application if the foreign application was filed more than one year before the U.S. case. This is too strict. The critical circumstance should be that a certificate *issued* in a foreign country prior to the filing of the United States application. If the application for the foreign certificate was filed more than one year before the U.S. case, the U.S. application is barred, or, if issued, is invalid. That is to say, issuance of the certificate is what makes the knowledge public, not the mere filing of the application. The filing would be in confidence, under Sec. 56 of H.R. 13631.

Section 43—At first impression, this section is ill conceived and ill adapted to the provisions of the treaty. Should not protection be extended to nationals of other countries who have an established place of business in the United States?

Section 44—This section, which provides for the issuance of a compulsory license by the Secretary of Agriculture, runs counter to the long-established

policy of our patent system. That policy is based on many earnest and bitter debates, extending back over the forty years that I have been in practice. A very large proportion of the patent bar deeply and earnestly believes that one of the reasons our patent system has surpassed all others is the fact that we do not subject our inventors to the uncertainty and unfairness normally associated with compulsory license laws.

Chapter 5

Section 52—There is a procedure currently being followed by the drug industry for the establishment of generic names to identify new drugs and pharmaceuticals. A parallel system should be established for identifying new varieties of plants. The German law provides exactly that, and it is much better to refer problems of nomenclature to a stable and established organization which is determining generic names constantly for the entire industry than it is to leave this important matter to the discretion of private firms, whose personnel cannot possibly have so broad a background.

Section 56—Should provide that confidentiality ceases when the certificate is granted.

Chapter 6

Section 62(b)—Was it really the intention, in the last sentence of this subsection, to require the payment of a delayed "filing" fee? There is a fee for belated payment or other action, specified in Section 31. That amounts to ten dollars. The filing fee is fifty dollars. Paying that much for delayed response to an Office action would seem to be on the excessive side.

Chapter 7

Section 71—What other courts of appeal are supposed to have jurisdiction over decisions made within the Plant Variety Protection Office? This section should establish venue provisions, at the least, unless the words "without limitation to that court" are deleted. We have enough trouble with divergent views as between the Court of Appeals, D.C. and the Court of Customs and Patent Appeals. Let's not let any more courts write conflicting precedents.

Chapter 8

Section 83—The term of protection should be longer, and might desirably vary, in view of the nature of the plant. The provisions permitting waiver of certain rights seem to be somewhat unrealistic, particularly since they require alteration in the form of the certificate.

The last sentence of subsection (b) affords a fertile opportunity for argument, namely, changing the term of a certificate to penalize delay in prosecution.

Section 86—It is very desirable to provide that an error in naming the breeder may be corrected at any time. It is unfortunate that this should be limited by the expression "without deceptive intent", as it is here and also in Section 51(b). The same language appears in the patent act and in Senator McLellan's bill. But the time when correction of the named breeder is most important is when an unscrupulous individual has named himself as the breeder, with 100% deceptive intention. Under those circumstances, the certificate is invalid because issued to one who was not entitled to it, and this issuance will have occurred with deceptive intent, and therefore will be incapable of correction.

Chapter 9

Section 91—One of the most important rights of a patentee or a certificate holder is to come promptly into the possession of a defined and assured right to exclude. The provisions for post-issue attack, by opposition or otherwise, simply delay exploitation of the new variety, because investors will hesitate to buy a right which has not yet been assured. It is subject to attack for five years by any person—which means every person. The right to attack should at least be limited to one who believes himself likely to be damaged by the continued existence of the certificate. Would it not be much more sensible to allow one who was really damaged to pursue a remedy under the principles of general law?

Section 92—Considering the mathematical impossibility of independently duplicating two products of nature, even where it is intended to do so, it is anticipated that determination of priority rights will seldom be required. Under those circumstances, would it not be best to issue a certificate to each, and refer the parties to a civil action for determination of their rights?

Section 93—seems to be somewhat inconsistent, in subsection (a), since it is limited to final judgment on an *application*, and yet requires endorsing the notice

of cancellation on copies of the specifications of the accused plant variety thereafter distributed. Is it the intention that specifications which have been refused protection should be circulated by the Office?

According to subsections (b) and (c), one having a right to challenge priority retains the opportunity to offer his evidence in later litigation, whether he failed to challenge priority during the time allowed (subsection (b)) or suffered an adverse ruling after having challenged priority (subsection (c)). This is analogous to patent practice.

Section 94—sets up a civil action in cases where a certificate has been awarded to two or more different entities with respect to the same variety.

Chapter 10, on ownership and assignment.

Section 101(d)—requires the recording of an instrument affecting title within one month of the date of its execution, in order to prevent a holder in due course without notice from acquiring rights.

Section 102—provides for ownership of propagating material during a testing period, and affords a remedy by civil action against anyone who comes into possession of seed or other sexually reproducible plant material and uses it for any purpose other than testing for the benefit of its owner. Notice by tag or label is specified. Commercial sale by the owner precludes action against the tester.

Chapter 11, deals with infringement, and defines eight different acts, any one of which constitutes an act of infringement.

Subsection (7)—makes it an act of infringement to asexually reproduce the novel variety.

Section 112—provides that one may save seed and grow the resulting variety for his own use, without infringing.

Section 113—establishes a personal defense against a certificate on behalf of one who had developed a variety more than one year prior to the filing date of an adverse application for a certificate with respect to such variety. This is a more sensible provision than the corresponding section of the Patent Act, which gives no alternative but to invalidate the patent.

Section 114—provides that it shall not constitute infringement to save seed for use as food, feed, or manufacture, for distribution through the usual channels. One who diverts seed from such channels for growing purposes cannot plead lack of notice.

Section 115—use of a protected variety for plant breeding or bona fide research does not constitute infringement, nor does the mere transportation, as by common carrier. (Section 116)

Chapter 12, provides remedies for infringement. These are practically identical with those established under the Patent Act.

The defenses stated at Section 122 are parallel to patent defenses. There is, however, a provision in subsection (d) which permits a court to exercise discretion in awarding damages where the defendant planted the accused variety prior to the issuance of the certificate, with innocent intentions.

Section 126—provides the same six-year statute of limitations as does the Patent Act, but shortens it to three years where the proprietor had knowledge of the infringement.

Section 127—is similar to the marking section in the Patent Act. This has always seemed to the writer to be needlessly harsh, in providing that *no* damages shall be recovered where the holder of the certificate has failed to attach the proper marking. It would seem to be much more realistic to provide that the damages awarded shall be reduced with respect to sales occurring prior to actual notice, where the proprietor had failed to mark. The reasonableness of such an exclusion becomes quite apparent when it is realized that much of the growing which is likely to occur will be done under license, and licensees are notoriously careless about marking.

Section 128—dealing with false marking, gives the commissioner the authority to issue a cease and desist order when satisfied that someone is improperly using such expressions as "U.S. Protected Variety" or "Propagation Prohibited". One who violates a cease and desist order for the purpose of deceiving the public shall be fined not more than ten thousand dollars and not less than five hundred dollars. In addition, a civil action is made available to anyone likely to be injured by the false marking.

Section 129—Foreign entities must name a representative for service of process.

Chapter 13, Usual saving clauses—Intent and Severability.

Chapter 14, Makes the act effective on the date of its passage, and provides an amendment to the Federal Seed Act dealing with the marketing of certified seed.

Section 143—provides "non-exclusive" jurisdiction to the Court of Customs and Patents Appeals to review decisions of the Plant Variety Protection Office.

Mr. DE LA GARZA. Now the main author of the legislation, Mr. Purcell. Do you have a prepared statement, sir, or proceed in any way you wish.

STATEMENT OF HON. GRAHAM PURCELL, REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. PURCELL. After hearing these learned men I don't feel that I can add anything to this hearing. I will just say that certainly with the kind of caution Mr. Klein has issued us here that the bill should be reviewed so we are not prevented from being able to participate or gain advantage from any international agreements.

Other than that it seems to me that the plant and seed breeders in this country deserve this kind of protection. I would hope we can get this passed through the Congress with a minimum of delay.

There are one or two questions I would like to ask one of the witnesses to clear up some matters.

Mr. DE LA GARZA. Very well.

Mr. PURCELL. Dr. Lodén, I think I picked you out for this question. Quickly give us a definition of germ plasm.

Dr. LODÉN. Germ plasm is that material located in the cell which controls the traits of plants and animals, the genes located on the chromosomes.

Mr. PURCELL. Will you then tell me what protection does any company now have on these hybrid types of seeds? Some of you made some reference and used a term that I either did not hear correctly or did not understand implying that you now had a degree of protection that I am not familiar with. What protection and under what law do you gain protection for those types of operations?

Dr. LODÉN. I think many of the statements have reference to built-in genetic protection for hybrids. What we are saying here is that a hybrid is the controlled cross between two or more individual lines and it is a seed produced from this cross, the hybrid sold to the farmer. The farmer cannot save the seed of that hybrid that he plants because it breaks out——

Mr. PURCELL. It is like a mule.

Dr. LODÉN. That is right. Our company and other people engaged in the development of hybrids have a company secret, for example, as to which materials make the hybrid. We also develop those materials and they are our exclusive property which we protect and do not let our competitors have. We have a genetic protection as opposed to the legal-type protection of the bill.

Mr. PURCELL. I understood that but I got the idea somebody had legal protection.

Dr. LODÉN. There is no legal protection.

Mr. PURCELL. There is no law in any State or jurisdiction anywhere in this country which gives you that protection?

Mr. SOUTHERLAND. There is one law in Texas.

Dr. LODÉN. There was a law passed in Texas which gives a legal form of protection to the developers of cotton varieties within that State. The law is not yet operative because we have not had the time to get the new varieties available. It passed the last legislature. It states that only seed of certified varieties may be offered for sale, so this in effect gives the breeder of cotton varieties a measure of control because he can control it.

Mr. PURCELL. There is no legal ground in connection with hybrid varieties?

Dr. LODEN. That is right.

Mr. DE LA GARZA. Thank you very much, Mr. Purcell.

I have further statements and communications I would like to submit for the record if there is no objection.

(The statements, telegrams, and letters follow:)

STATEMENT OF HON. CATHERINE MAY, A REPRESENTATIVE IN CONGRESS FROM
THE STATE OF WASHINGTON

I appreciate this opportunity to discuss the provisions of H.R. 13631, the Plant Variety Protection Act. I am a co-sponsor of this bill and fully support its objectives.

The purpose of this legislation is to provide more incentive for private industry to develop new and better varieties of plants, and this, of course, will be of real benefit to U.S. agriculture.

While I would urge the Committee to act favorably on this bill, at the same time I would also urge you to consider carefully several points which I feel are cause for concern.

Some of my constituents in the State of Washington—specifically the Washington Association of Wheat Growers—have raised certain questions with regard to provisions of this legislation which would affect seed wheat.

The Association has indicated in their statement to the Committee that they support the principle of plant variety protection as embodied in this bill, but they request consideration of amendments in two areas.

First, the Association is concerned with the quality of seed wheat and the potential for development of poor quality wheats which would be unsatisfactory to the miller, baker and export trade. Wheat growers have had some bad experiences in the past with poor quality wheat. For example, the release of a Mexican-type hard red spring variety with undesirable dough mixing qualities caused serious problems within the industry. After two years of testing in public and industry laboratories it was placed on the USDA "discount" list and is phasing out, but during the testing period many farmers paid high prices for a variety that was unsatisfactory.

Steps could be taken toward at least a partial alleviation of this problem if H.R. 13631 could be amended to require that at the time of application for protection under the act, a wheat seed developer would have to place on file for public information with the Commissioner, data and information as to milling qualities as well as end use qualities of the new variety.

The specific information required could be established by the Commissioner through an administrative hearing process, but the object would be to set up some sort of objective criteria, or comparative standards by which a new wheat variety could be measured, so that farmers would have access to this important additional information.

The information should be made available to the purchaser at the time of sale, as well as having been on public file from the time of application. Of course, such information would not be a warranty or guarantee, but would simply be for the purpose of providing the farmer with a reasonably accurate, objective comparative analysis of the product, rather than imposing specific quality standards which would have to be met before the variety could be protected.

A second point of concern to which the Association also refers has to do with potential problems relating to security of breeding materials.

With the protections and the additional incentives provided by this bill for private development of plant varieties, public wheat breeders could find themselves in a highly vulnerable position with regard to the potential for theft of their test varieties. Because of the open nature of their work, public wheat developers are already faced with serious security problems which could be intensified by this legislation. And, although the bill does provide a mechanism for challenging a registration, the time and expense involved not only in challenging, but also in simply registering and protecting varieties, will impose additional burdens on already underbudgeted, understaffed public wheat breeders.

I hope the Committee will consider the possibility of amending the legislation to alleviate the potential for these problems.

There are two other points which I hope can also be given special attention.

One relates to basic federal policy on funding of programs of this type. Should it be self-supporting, or should it be financed largely through public funds? It appears that the bill in its present form would require public funding to meet the major portion of program costs.

Such federal programs as the Perishable Agricultural Commodities Act, the fresh fruit and vegetable inspection program, meat and poultry grading for quality, and local administration of federal marketing orders (representing the major portion of total marketing order costs), are largely or fully self-supporting. On the other hand, such programs as cotton and tobacco grading and meat inspection for wholesomeness are public supported.

In addition, the bill specifies the fees which may be charged, and the Committee may wish to discuss the advisability of providing some administrative flexibility for raising as well as lowering the fee levels, irrespective of the Committee's decision on funding.

Pursuing the point of administrative flexibility one step further, the Committee may also want to consider providing more discretionary authority for the Secretary of Agriculture to utilize the existing USDA structure for administration of this program, rather than specifying in the bill the exact type of organizational structure.

It appears to me that in both areas—financing and organizational structure—the Secretary should be provided the flexibility to establish and operate an effective and efficient program in appropriate relationship to overall federal budgetary objectives and parameters.

Thank you for your courtesy in permitting me to share these views with you.

STATEMENT OF HON. CLARENCE J. BROWN, A REPRESENTATIVE IN CONGRESS
FROM THE STATE OF OHIO

I wish to speak today in support of a bill I am co-sponsoring, HR 13631—the Plant Varieties Protection Act.

Today our patent and copyright laws extend themselves to cover inventions, the works of artists and writers, and the innovations resulting from scientific research. It seems only fair and reasonable to extend similar protection to those whose investment, effort, knowledge and skill result in the development of new and stronger plant varieties. Existing law does not now provide such protection to private plant breeders and the developers of sexually reproduced plant varieties. This legislation seeks to correct the oversight of that situation.

Such protection seems certain to be an incentive to stimulate the growth of work and research in this area. When, as a result of such research, the yield of a particular variety is increased, or its immunity is strengthened or its harvesting characteristics improved, then a contribution is made to the total agricultural development of the nation. The consumer not only gains as a result of the improved quality of items that are marketed but, less obviously, from the fact that it is to his benefit when an improvement is made in the farmer's supply.

I am co-sponsoring this legislation because I believe it is a most economical and efficacious means to redress the present inequity under which botanists, herbalists, and horticulturists must labor. It would apply to the area of sexually reproducible varieties the same general type of self-help incentive for innovation that has worked well under the patent laws for plants not reproduced sexually. A breeder may now spend years developing a naturally reproduced and valuably useful new plant variety with no more reward than having his name attached to the plant in a trade journal or seed catalogue. Obviously, such a situation is inherently unjust and tends to restrict the initiative of private developers.

STATEMENT OF HON. FRANK HORTON, A REPRESENTATIVE IN CONGRESS FROM
THE STATE OF NEW YORK

Mr. Chairman, I am pleased to have this opportunity to testify in support of H.R. 13631, the Plant Variety Protection Act of which I am an original sponsor with Mr. Purcell. As you know, the bill provides legal protection for a limited time for the breeder of a new variety during which time he has control over the sale of seed of the variety.

I sponsored this measure because it promotes an incentive to invest additional funds and efforts toward developing other new and improved varieties. The por-

tection would give the plant breeder the means of recovering the expenditures for developing a farm-accepted variety and a chance for making a fair profit on his investment of money and effort.

I first learned about the need of this legislation from a constituent, Joseph Harris of Harris Seeds in Rochester, N. Y. He stressed that the bill will be in the public interest since it will stimulate new and improved varieties with increased yields, greater disease and insect resistance, increased protein, oil, fibre strength, quality of vegetables, and many other crop improvements unknown to the plant breeders.

This bill is only giving to plant breeders the same protection afforded inventors of machines, chemicals, authors and songwriters. The term of protection runs for 17 years, just like a patent.

The object, of course, is to provide incentives for private enterprise to undertake the research and development required to produce novel varieties of plants.

I was most pleased to learn of the Department of Agriculture's favorable views toward this objective.

Immunerable benefits would result from the enactment of this bill. The breeder of the variety would be assured of being reimbursed for his investment, and would therefore be in a position to make further efforts to rapidly develop better crop varieties.

Since growers of certified seed would be protected from the competition of non-certified seed they could expect increasingly profitable operations.

Seed dealers could give better service to farmers by offering only seed of known pedigree and known performance which had been produced under the auspices of the Crop Improvement Association of his state.

The farmer would be assured of purchasing seed no more than two generations away from the originator of the variety. He would know the seed had not deteriorated through continued reproduction, careless handling or mixing.

Mr. Chairman, I think that all of agriculture would benefit from increased emphasis and effort to develop new and improved varieties. I urge that the committee favorably report this measure.

STATEMENT OF HON. CHARLOTTE T. REID, A REPRESENTATIVE IN CONGRESS
FROM THE STATE OF ILLINOIS

Mr. Chairman, as a co-sponsor of H.R. 13631, I appreciate having this opportunity to present a statement in support of the Plant Variety Protection Act.

The Constitution makes recognition available to inventors and discoverers of their work in all segments of industry, including agriculture. Therefore, this legislation is based on the "authors and inventors" clause of the Constitution. It seems appropriate to extend some form of rights to plant breeders of sexually reproduced plants since asexually produced plants are already covered under the existing patent laws.

Just as inventions, writings, and other creative activities are protected and rewarded by patents and copyrights, it is desirable that the same protection be afforded those who create new crop varieties.

A highly satisfactory form of breeders' protection is that which is automatically obtained when hybrids are used as varieties, since the creator or originator has control through exclusive possession or knowledge of the parents. Our bill—H.R. 13631—leaves undisturbed both the automatic protection of hybrids and the present plant patent law. It does extend similar incentive protection to the long-neglected field of sexually reproduced crops, in a form carefully tailored to the nature and needs of this field.

In my judgment, the enactment of H.R. 13631 will benefit both producers and consumers. Farmers will benefit by every successful improved variety which this bill will bring forth by encouraging more commercial breeding research—whether the improvement be in yield, quality of product, or resistance to disease or other causes of crop loss. The consumer benefits directly by any improved quality and indirectly by the other factors which increase the supply or reduce the producers' costs or risks.

It is my hope that the Committee will take favorable action.

STATEMENT OF HON. BURT L. TALCOTT, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. Chairman, and Members of the Committee: H.R. 13631 is a carefully prepared bill resulting from several years of study and effort to encourage greater research to develop better seeds to produce pest resistant plants, greater yields, and better varieties that will reduce production costs and enable the producer to participate more fully in the national economy.

For a number of years seeds of this kind were developed only through Federal State research stations and a very few private research organizations. There is no way that seeds of this kind could be protected under the basic Patent Act. For a number of years the American Seed Association has explored with the United States Patent Office, possible ways of protecting research investments by private organizations. Despite the most careful study by patent attorneys and specialists in the Patent Office, it is evident that the Patent Act cannot be utilized to afford these private research organizations any protection.

About two years ago these organizations and interested Members of Congress approached the Department of Agriculture to see whether there was any way that protection might be afforded such private research firms. The Department of Agriculture and Members of Congress were most interested, because if a way could be found, the Federal research funds now being used could be augmented by thousands of dollars to private research firms.

The bill before you has been carefully drafted and it does provide a means to achieve this purpose. The Department of Agriculture feels that with such authority they can give some protection to private research firms, and we can look forward to increased research in the years to come.

There is obviously a public interest in inducing more research towards the production of plant varieties. Most indirectly stated, the benefits to be derived by the enactment of the bill would be increased yield, greater disease resistance, insect resistance, increased sugar or protein content, improved quality of vegetables, and new strains of flowers.

Plant variety protection is in many respects closely parallel to copyright protection. For example, it is the work which goes into the creation of a new variety that merits protection, rather than any "idea" or unobvious concept. As with copyrights also, the nature of the protection is so narrow that there is almost no chance that one person's protection will interfere with the independent work of another. This, together with the careful wording of the bill I have co-sponsored, leaves almost no chance of harmful abuses, and makes it practicable, as in copyrights, to provide immediate protection by having the statutory rights begin upon distribution with appropriate copyright notice.

I strongly feel that the bill can be completely justified as being in the public interest, and I urge favorable consideration of its provisions as a necessary step which we must take if we are to insure consistent and continuing gains in developing new plants and their products to cope with the demands of the future.

Thank you.

STATEMENT OF WASHINGTON ASSOCIATION OF WHEAT GROWERS, RITZVILLE,
WASH.

Mr. Chairman and Members of the Committee we appreciate the opportunity to present this statement on H.R. 13631.

The Washington Association of Wheat Growers is a voluntary membership organization of wheat producers which has membership in excess of 3400 and maintains offices at 301 West Main, Ritzville, Washington 99169. The goal of the organization is to enhance the business climate in which the Washington wheat producer operates. To this end the Association has, since its inception in 1954, been involved in the development of both domestic and export markets for Pacific Northwest wheat. During the same time it has been involved in the development of wheat varieties having acceptable milling and end-use characteristics as well as acceptable agronomic characteristics. This total involvement has included not only an advisory capacity in the use of public funds but also, through the Washington Wheat Commission, the allocation of producer funds for wheat market and variety development. Since H.R. 13631 relates to and can be expected to generate more active entry into wheat variety breeding by private plant variety developers we are naturally concerned about its provisions.

In this respect our organization on June 9, adopted this policy position:

"This group supports the principle of the Plant Variety Protection Act provided that it is amended specifically for wheat as follows:

1. Improve the language to remove vagueness regarding security of breeding materials.

2. Require a descriptive statement of facts reporting conclusions of the proprietor with regard to certain quality related factors which are to be specified by the Commissioner of Plant Variety Protection.

In absence of the above amendments we recommend that wheat be deleted from the Act."

With respect to item number one: We believe H.R. 13631 as written presents an extreme potential for damage to the PNW wheat industry whose non-captive export market customers are becoming increasingly quality conscious. Our present public breeders show a very high degree of concern for wheat end-use qualities and have been very successful in keeping our producers supplied with a succession of high-end-use-quality wheats to replace those that have become disease ridden and useless. Private breeders have not yet demonstrated this capability although we hope they soon do. Our industry cannot afford to risk damage to the public breeding program until such time as private breeders do demonstrate this capability.

The work of public wheat breeders would be highly susceptible to plagiarism and a subsequent blocking of their development efforts unless this Act gives them greater protection. Being public funded they must annually divulge information concerning lines being developed and must give the public easy access to variety test plots. In essence they are required to point out to an unscrupulous plant breeder exactly which test line seeds he should steal or which unique plant characteristics he should register for dishonest personal gain.

If the required divulgence of information and easy access is terminated then public confidence in USDA-ARS and state funded wheat development efforts will erode with a naturally expected result that public funding will be gradually withdrawn.

If the public breeder must for protection register every new experimental line he develops or if he must continually challenge variety registrations then a disproportionate and unnecessary amount of his development funds will be wasted non-productively. Again confidence would be lost and withdrawal of funding could be expected to result.

We do not oppose a shift from public funded wheat variety development to privately funded development. Neither do we believe that all private plant breeders or companies are so unscrupulous that they would plagiarize the work of public plant breeders. We are concerned however, that adequate protection be given to the work of wheat breeders in public employ until such time as private breeders have demonstrated the same ability for achieving a continuing output of quality wheats as that demonstrated by public plant developers.

To the achievement of this end we request that the Act be amended to state that any wheat variety submitted for registration that has "unique and identifiable characteristics" of no discernible difference from a previously identity-numbered public station developed variety and which is subsequently challenged is presumed to have been first developed by the public experiment station and is not eligible for private registry unless the private breeder can establish to the satisfaction of the Commissioner that his variety was independently developed.

With respect to item number two: As previously indicated, wheat quality with respect to end-use characteristics has increasingly become a very important factor in the export marketing of Pacific Northwest wheat. In 1968 quality factors caused a loss of sales of several million dollars worth of this wheat in the Japanese market. It is therefore imperative that both wheat producers and merchandisers have available to them a reasonably accurate and use-oriented description of the quality of production that might be expected from a specific variety when grown in a specific locality.

The need to co-mingle wheat as it moves through the market channels means that a relatively small amount of visually unidentifiable wheat of poor quality could destroy the end-use quality of a much larger amount of acceptable quality wheat. This does happen now both through design and accident. To minimize this sort of thing both the producer and the merchandiser need to have at hand the best possible description with respect to the end-use qualities of a particular wheat variety.

It is not desired that this description be construed as a warranty, express or implied, or that any registered variety be required to meet specific quality standards prior to registry or release. It is desired that some mechanism be adopted

that would assure reasonable accuracy of the quality description of varieties submitted for variety protection.

It is further desired that the Commissioner of Plant Variety Protection be required to use public hearings as a method in establishing and altering uniform standards for testing, that he establish requirements for comparative description and that the period of testing required not be overly long.

We therefore request that amendments to the Act (which will be submitted) be adopted before the Act is voted out of Sub-Committee.

Much of the economy of the State of Washington and the Pacific Northwest is dependent upon the export acceptability and sales of wheat that is produced within the region. We therefore respectfully request that you give fullest consideration to our requests in respect to H.B. 13631.

STATEMENT OF ELDRON REEVE ON BEHALF OF CAMPBELL SOUP CO.

My name is Eldron Reeve.

I am appearing here as Vice President-Vegetable Research for the Campbell Institute for Agricultural Research, a Division of Campbell Soup Company. We have maintained active agricultural research and plant breeding programs for the past 33 years. During this period, we have released to the public domain 32 varieties of tomatoes in addition to new varieties of several other vegetable crops including potatoes, okra, Scotch peas, peppers, rutabagas and mushrooms.

This testimony stems from a sincere belief that H.R. 13631 would severely impede progress in the development of new varieties of plants. Unprecedented progress has been made under the existing system free of artificial controls and protection. We believe H.R. 13631 is contrary to the best interests of the agricultural community and to the consuming public.

We respectfully submit the following reasons in support of our opposition to the proposed legislation.

1. *The release of new varieties would be delayed.* The success of any plant breeding program depends largely on the store of genetical material or germ plasm available to the plant breeder. For example, our bank of tomato genetical material presently contains 2249 items. These were obtained on a free exchange basis among plant breeders from all corners of the world. This material has provided the basis for the 32 tomato varieties we have developed and released.

As a result of activity in recent years leading up to the present proposed plant variety protection act, there has been a perceptible reluctance among plant breeders to exchange genetical material. We believe enactment of H.R. 13631 would essentially eliminate exchange of valuable germ plasm and severely curtail the development of new varieties.

2. *Administration of the proposed plant variety protection act would be difficult, if not impossible.* Some varieties are morphologically indistinguishable, but differ in certain nutritional or flavor characteristics. For example, with respect to morphological characteristics (plant habit, fruit size and shape, color) the objective in several of our tomato breeding programs is identical, but objectives with respect to solids, acidity and flavor components are different. To establish uniqueness with respect to solids, acidity, vitamin content and subtle volatile components is extremely time-consuming and requires highly sophisticated equipment and specially trained personnel. Notwithstanding the time—perhaps years—and expense involved, we submit it would be next to impossible for the proposed plant variety protection office to establish uniqueness of such new varieties, and to administer the program.

3. *The cost would be exorbitant in terms of money and professional talent.* Applications for certificates of plant variety protection would be expensive for the proprietor to prepare and for the Commissioner to certify. In case of contested awards and infringement litigation, the cost in terms of money, delay in release of new varieties and unproductive use of professional talent would be enormous. These are costs that eventually must be borne by the consuming public.

4. *The present, voluntary system encourages creativity and affords protection through seed certification and development of F_1 hybrids.* If desired, protection can be achieved through existing seed certification programs and the development of F_1 hybrids. F_1 hybrids provide a built-in protection system, since control of the parental material can be retained by the originator. The present voluntary system rewards creativity, free of the handicaps of an artificial protection system.

For the reasons enumerated above, we respectfully submit that H.R. 13631 is

not required to provide protection for the development of new plant varieties, but would in fact impede progress and be detrimental to the interests of the agricultural community and the consuming public.

STATEMENT OF THOMAS B. HOUSE, PRESIDENT, AMERICAN FROZEN FOOD INSTITUTE

The undersigned Thomas B. House, President of the American Frozen Food Institute (formerly National Association of Frozen Food Packers), whose members pack some 90% of the national production of frozen vegetables, fruits, and juices and a large volume of other frozen foods, presents the following statement in behalf of the Institute and the industry it represents in connection with H.R. 13631:

The American Frozen Food Institute (AFFI) opposes H.R. 13631 providing for Certificates of Protection of 17 years duration for sexually reproduced fruit and vegetable varieties. For practical purposes the Certificate has most of the attributes of a patent.

There are many reasons supporting this position.

1. The development and release of new varieties will be delayed.
2. The free exchange of information, germ plasma, and breeding stock will be inhibited or limited.
3. It would be difficult or impossible to apply standards and procedures analogous to patents to sexually reproduced varieties. Sexually reproduced varieties are on the average more variable and unstable from area to area, season to season, and generation to generation than are those asexually reproduced. Thus the existing law as to asexually reproduced plants is not a precedent. The "invention" is in many cases incapable of identification and distinction. In many vegetable categories there are no universal guidelines, only a few people are expert enough to judge, and they are often likely not to agree.
4. Plant breeders generally cannot leap ahead from invention to invention. The many characteristics sought in breeding—such as sugar, acidity, color, solids, seed size, leaf area in relation to fruit yield, etc.—are difficult to measure accurately. Moreover most wanted characteristics are generally achieved bit by bit with barely observable improvements over preceding generations. The proposed law would either stultify this effort by plant breeders as they move ahead inch by inch or lead to continuous expensive litigation and infringement suits.
5. Time will be lost from plant breeding activities. Those gifted individuals now expert plant breeders will be required to devote considerable time to the technical and legal aspects of the Certificate of Protection law and the paper work involved in preparing applications to say nothing of interference and litigation proceedings.
6. The cost is considered prohibitive both to the Federal Government and the plant breeders. It has been estimated that 300 Certificates (patents) would be applied for yearly at a cost to the Department of Agriculture of between \$300,000 and \$400,000. It has also been estimated that the cost of preparing and filing an application for a Certificate (patent) would be about \$1,000 with additional prosecution costs amounting to \$500, assuming no extended proceedings such as an interference or appeal. Actually, there are many hundreds of thousands of varieties of a particular fruit or vegetable which will have to be properly dedicated to the public or certified (patented) by their present owners if the owners wish to safeguard what they already have. The estimate of 300 applications a year is not considered accurate, at least during the initial years. During these years the number of applications may be limited only by the available technical and legal personnel in private industry and their necessary counterparts in the Department of Agriculture.
7. This is in a sense special interest legislation. It establishes a monopoly by Certification as an inducement to further plant breeding when in fact today most sexual plant breeding, in terms of money expended and perhaps results, is already in the public domain or being dedicated to the public through the Federal Government, agricultural colleges, and private corporations which make their varieties available to all without charge. For example, it is estimated that out of a total agricultural research budget in the United States of about \$800,000,000 a year, \$400,000,000 is budgeted by the Department of Agriculture and public institutions and really represents taxpayers' money spent for the benefit of the public generally.

8. Perhaps most important, the proposal is inequitable. Having in mind the volume over many years of fruit and vegetable research by public agencies and private corporations for their own benefit and the public domain, the inequity or windfall from the granting of a particular Certificate of Protection is apparent. For example, it is possible for a plant breeder to cross varieties A and B, which may together represent perhaps fifty man years of genetic research by the Department of Agriculture and one of our great universities. A and B were both in the public domain. C, the result of crossing A and B, can be the subject of a monopoly which to a great extent represents the accumulation of knowledge and breeding by two great institutions achieved over many years.

For these reasons it is respectfully submitted that H.R. 13631 should not be enacted. The Institute has limited its opposition to H.R. 13631 as it applies to sexually reproduced fruits and vegetables. We express no opinion as to sexually reproduced flowers and ornamentals because from the viewpoint of the consuming public aesthetics rather than food is involved and because of the more limited interest of our membership, who are generally not involved in the propagation of flowers and ornamentals. Nor is this Institute opposed, indeed we actively support, the extension and improvement of the traditional seed certification programs, which bear no resemblance to H.R. 13631, and the use by plant breeders of F1 hybrids. Both of these methods afford some protection for plant breeders with minimal disadvantages and costs for plant breeders, farmers, processors, and consumers.

Thank you for affording us the opportunity of presenting our views.

STATEMENT OF DELTA & PINE LAND CO., SCOTT, MISS.

Delta & Pine Land Company is a Mississippi corporation involved in farming and in the cotton planting seed business. This seed business is based on the sale of cotton varieties which have been developed by this company since it began a cotton breeding program in 1915. Our breeding efforts are almost entirely on cotton and are located at our nurseries here at Scott, Mississippi; Lubbock, Texas; and Casa Grande, Arizona. At present our work is limited almost entirely to cotton because we do not feel that the other field crops have a sale potential which would offset the cost of developing new varieties.

We are able to recover our costs in cotton because of our long experience with this crop and our success in developing very popular varieties. The custom of farmers in buying a certain amount of their cotton planting seed requirements from the breeders of these cottons and the difficulty of saving cotton planting seed in a general farming operation have lead to our being successful. The fact is that we are our own worst competitor. In other words, competition with other sources of seed of varieties which we have developed is a bigger sales hurdle than varieties of competing cotton breeders. For example, in 1967 we introduced a new variety, Deltapine 16, which has been very popular. Last year acreage planted to our varieties in the United States increased 7% for a total of 26%. At the same time, however, our own sales of Deltapine varieties decreased 5%. Farmers generally are planting at a lower rate but this by no means accounts for the decline in our seed sales from one year to the next while the acreage planted to our varieties is showing a healthy increase.

The Plant Variety Protection Act would enable us to participate in sales of our varieties based on the success of our research, development, and promotion. This Act would enable us to supervise the quality of seed sold which bears our variety name. We could expand our plant breeding efforts into major (or minor) crops which are grown in our area of production, for examples, soybeans, small grain, forages.

The Plant Variety Protection Act would offer benefits to farmers at the same time.

1. More firms would be interested in working on various varietal problems, so that finding solutions to these problems would be more likely.

2. The supply and quality of a particular variety would be more stable. Needs could be predicted so that present cycles of shortage and surplus seed could be equalized and the quality of these supplies could be much better supervised. At the present time in years of shortage caused by bad weather supplies of seed of very poor varietal purity and germination are being offered for sale. On the other hand in a good seed year the market is flooded so that legitimate seed producers must compete with large volumes of seed offered

for sale by opportunists. It is a characteristic of the cottonseed business that cottonseed is produced as a by-product of the production of lint, so that all producers in a sense are potential producers of planting seed.

3. Prices of cotton planting seed tend to fluctuate rather widely with the supplies so that one year good quality seed may be priced about the same as oil mill seed and another year when there is a shortage seed of questionable quality is sold for very high prices.

4. While a breeder under the Plant Variety Protection Act would be entitled to the benefits of selling his variety, it is specifically written into the Act that nothing would interfere with a farmer's ability to plant seed which he himself has produced.

The seed industry as a whole would benefit from the Act.

1. Trade in seeds of varieties which would tend to be handled by legitimate seed dealers and less of it would be done by the in-and-outers with the result that much more stable quantities, qualities, and prices would prevail.

2. Independent producers and processors would not be forced out of business by seed breeding firms since with many field crops the amount of seed required is so great that no one company could produce and process the seed needed of his variety. The same people who are now growing seed and processing it would continue to do so except that the breeder would have a chance to participate in the success of his variety through licensing fees and to exercise a greater degree of supervision over the quality of seeds bearing his variety name.

3. Better supplies and quality of seed would lead to greater customer satisfaction, both for the seed dealer and the breeder. Farm products are used by a wide range of industries as a basic raw material and many products are used directly or after processing as food. Progress in varietal development encouraged by this law would result in products of better quality at lower cost.

Probable effects of this Act would be:

1. A considerably greater effort by commercial plant breeders to develop improved varieties of seed propagated crops which are not hybrids. Efforts to improve seed crops presently offered by private breeders would be increased since there would be assurance that successful efforts would be rewarded.

2. It is doubtful that an excessive number of proprietary varieties would be developed because the process of variety development is expensive and depends on the efforts of highly trained people over a considerable period of time. About 1960 our company started to develop from scratch a new variety of cotton adapted to the High Plains of Texas. It is expected that such a variety will be ready for growers about 1973, some 14 years after development was started and representing a cost of about \$450,000. The expenditure of this amount of money and time means that these efforts can be made only in cases where there is reasonable expectation that these expenses can be recovered from the sale of the resulting seed.

In designing this bill the authors have thoroughly studied the systems of other countries, have given wide publicity to its provisions, and have revised it to meet the needs of all those who might be affected by it. As a result it has broad support from many diverse groups, all of whom are interested in the improvement of American agriculture.

It is our firm belief that this Act will make possible the strengthening of agriculture with benefits to the seed breeder, the seed dealer, the farmer, and the ultimate consumer.

(Telegrams from the following persons or firms, favoring the proposed legislation were received by the subcommittee:)

Walter Baxter, Walter Baxter Seed Co., Weslaco, Tex.

E. F. Burlingham & Sons, Forest Grove, Oreg.

Ed Hefley, sales manager, Niagara Chemical Division, FMC Corp., McAllen, Tex.

C. S. Lankart, Lankart Seed Farm, Waco, Tex.

Oregon Seed Trade Association, Salem, Oreg.

Woodrow Rogers, Waco, Tex.

C. H. Warnken, Jr., Wilco Peanut Co., San Antonio, Tex.

Jenks White Seed Co., Salem, Oreg.

Irv Willman, manager, Esco Seed Co., Ltd., Pharr, Tex.

AMERICAN FARM BUREAU FEDERATION,
Washington, D. C., June 10, 1970.

HON. W. R. POAGE,
Chairman, House Committee on Agriculture,
U.S. House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN POAGE: The American Farm Bureau Federation is interested in H.R. 13631 and related bills which provide for the Plant Variety Protection Act. Our members are both producers of seed and users of seed and are therefore vitally affected.

In connection with the Plant Variety Protection Board that would be established by the legislation, we would urge that the bill be amended to provide for adequate farmer representation on the Board. As now written, it is unclear as to whether farmers would have any membership on the Board, and as both producers and users of seed, we believe farmers' interests should be represented.

The legislation currently provides for plant variety protection that would expire seventeen years from the date of issue of the certificate. We believe that farmers' interests would be better served by a lesser period of years of plant variety protection.

Many farmers derive substantial income from producing certified seed. Their right to produce certified seed should be protected by limiting the options given to breeders.

We recommend that the legislation be modified in these three respects before it is enacted.

We would appreciate your making this letter a part of the hearing record on H.R. 13631.

Sincerely yours,

MARVIN L. McLAIN, *Legislative Director.*

NORTH CAROLINA CROP IMPROVEMENT ASSOCIATION INC.,
Raleigh, N.C., June 8, 1970.

HON. ELIGIO DE LA GARZA,
Chairman, Subcommittee on Departmental Operations,
Committee on Agriculture, House of Representatives, Washington, D.C.

DEAR MR. DE LA GARZA: The Board of Directors of the N. C. Crop Improvement Association at their last meeting gave consideration to H.R. 13631, a bill to give "Plant Variety Protection" to developers of novel crop varieties of sexually reproduced plants.

The N. C. Crop Improvement Association is the official seed certifying agency in North Carolina and as such is vitally interested in the development and release of improved crop varieties for our agricultural industry. We believe that the basic principle of providing plant variety protection will encourage the development of better crop varieties through expanded development research by private industry. Passage of this legislation will provide the means whereby the developers of a sexually reproduced variety may maintain some control of its seed increases after it has been released to the public. By so doing, the developer may recoup the investment which was made in research. We think this is necessary in order to assure the farmer of better varieties through expanded research by private industry.

The N. C. Crop Improvement Association, therefore, fully supports the basic principles incorporated in H.R. 13631 and urges its favorable consideration for the advantages that will accrue to the farmers who need a continued supply of improved crop varieties.

We would appreciate it if you would include this letter in the record of the hearings on H.R. 13631.

Sincerely,

FOIL W. McLAUGHLIN, *Director in Charge.*

AMERICAN SEED TRADE ASSOCIATION, INC.
 Washington, D.C., June 15, 1970.

Hon. ELIGIO DE LA GARZA,
 Chairman, Departmental Operations Subcommittee,
 House of Representatives,
 Cannon House Office Building,
 Washington, D.C.

DEAR MR. CHAIRMAN: The American Seed Trade Association would like to submit the following comments on H.R. 13631 testimony presented by A. R. Klein, Patent Lawyer, Philadelphia, Pennsylvania. The remarks have been prepared by our legal counsel—

Statement of Louis Robertson, of Darbo, Robertson & Vandenburg, P.O. Box 670, Arlington Heights, Illinois, 60006, Counsel for the American Seed Trade Association.

This statement is primarily to reply to Mr. Andrew Klein's statement.

Although Mr. Klein spoke of actions within the American Bar Association, there should be no assumption that that Association is opposed to these bills. As he mentioned, that Association favors protection in the area covered by these bills, the only question being as to "how". No action within the Association has official standing until approved by the House of Delegates or Board of Governors. However, the last action of the Section of Patent, Trademark and Copyright Law was in August, 1969, at Dallas. A committee report had recommended a resolution reading:

Resolved, that the Section of Patent, Trademark and Copyright Law favors in principle the broadening of the existing plant patent provisions so as to make protection available for new varieties of sexually as well as asexually reproduced plants.

On being advised that a bill of the nature of the present bill was about to be introduced and that the particular wording would seem to prejudice such a bill, the resolution was changed, without dissent, to:

Resolved, that the Section of Patent, Trademark and Copyright Law favors in principle legislation making protection available for new varieties of sexually as well as asexually reproduced plants.

Any prior actions were not in derogation of the present bills because such bills had not been even considered.

It is remarkable really, that Mr. Klein's committee of patent lawyers was only 50-50 in favor of keeping all plant protection in the Patent Office.¹ I doubt that they had been exposed to such comments as those below, nor to the concept that variety protection is more analogous to copyrights than to patents. Patents commonly would be infringed by independent later work. Copyrights never are, as a matter of law. Variety protections almost never are, because the odds against two independent workers deriving the same variety are astronomical.

Mr. Klein mentioned the desire to make use of the great body of patent law precedents. Examination of past decisions under the Plant Patent Act has convinced me that such precedents are so ill suited for plant varieties that they are more likely to lead to bad decisions than to good decisions. For example, consider the decision of the United States Court of Customs and Patent Appeals in the case *In re LeGrice*, 301 F(2d), 133 USPQ 365. The decision was probably sound by patent law precedents, but reached the strange result of letting varieties be patented after they had been offered in British catalogues, and disclosed in them, for 10 years because general patent law precedents require that disclosures be "enabling" disclosures, teaching those skilled in the art how to make the invention. That is rarely possible as to varieties. In the present bill, more appropriate standards have been carefully worked out, in Section 42.

There is no possibility that upon passage of the present bill "all other forms of protection cease" as to the varieties it covers, or that plant patents will even be generally affected. I feel sure Mr. Klein will be surprised at his transcribed words to this effect, and will drastically revise them. If not, they certainly suggest an amazing misunderstanding within his committee.

Even if we were already a party to the treaty, unsolicited rights would be preserved by its Article 37.

Since writing the foregoing, I have discussed with Mr. Klein, by telephone, his statement, and he has authorized me to say that he did not mean any right in the

¹ The statement by Mr. Klein suggests that his committee was considering the question as a philosophical question, probably having no idea that the bill might pass in this Congress. Perhaps no member of his committee would choose a mere hope of expanding the plant patent law in some future year over actual enactment of other protection, such as this bill, now.

U.S. would be lost by an enactment of this bill but that there is a possibility that we would be disqualified from joining the treaty because of Article 2, for some additional reservations as to Article 4. As I point out below, however, it is reasonable to expect that by the time we get around to joining the treaty the problem that bothered Mr. Klein will have been cured by correction of the treaty or its interpretation.

Although Mr. Klein discussed some foreign problems, the present bills clearly would not aggravate such problems at the present time. On the other hand, they would seem to provide a basis for reciprocity to open the laws of many foreign countries to our citizens quite aside from the Paris Convention. The 17 year term of this bill causes no new problem. The general requirement of the Paris Convention is that the term "not be less than fifteen years" (Article 8). There is a strange separate requirement for 18 years for vines, trees, etc., but that is largely the area of our plant patent law which already is at variance because of its 17 year term.

Some of the troubles abroad to which Mr. Klein referred may be based on a strange or too-linguistic interpretation of Article 2 of the Paris Convention.² Because we are not a member of that treaty now, it can cause us no trouble now. By the time we are ready to join it, that strange interpretation may have been abandoned, or the troublesome words corrected. Or we could join it now with a reservation, at least with a reservation against letting that interpretation affect our internal law.

As a "point of personal privilege" I take this opportunity of my only statement for the record to note a strange personal situation. My client, the American Seed Trade Association, has expressed a willingness for fees to be set at a level of full support (meaning high enough to cover the direct cost of the matter for which the fee is paid). It is only because of my position as counsel that I have not vigorously asserted my personal view that the theory that any particular level of support by fees should be achieved is unfair in all instances, and is contrary to the public interest wherever it may decrease the effectiveness of the incentive, e.g. in the case of individuals for whom the total cost of using the incentive system is a severe burden. If and when the question of fees is considered after enactment of a bill (so that I cannot be causing any delay) I would welcome a chance to explain my personal views further. My views have been explained in connection with patents in the 1965 fee bill hearings before the Senate Judiciary Subcommittee on Patents, and in various articles.

In summary, I would add the following:

1. It would appear Mr. Klein does not have thorough knowledge of the contents of H.R. 13631.
2. This bill will not affect the past or future asexual Plant Patent.
3. The 1961 International Treaty for the protection of new plant varieties does not apply since the U.S. has not as yet signed it.
4. Great Britain, West Germany, Denmark, Holland and France now have "New Variety Acts."
5. These new laws are now in effect in Europe and H.R. 13631 more nearly resembles them than patents since these new laws cover sexually reproduced plants.
6. Legal counsels for private companies and the Association have studied the 1961 Paris Convention and H.R. 13631 and do not share Mr. Klein's fears.

We appreciate the opportunity of submitting this additional information.

Very truly yours,

JOHN I. SUTHERLAND, *Executive Vice President.*

ASSOCIATED HYBRID PRODUCERS COOPERATIVE SERVICE, INC.

Hudson, Iowa, June 8, 1970.

Chairman, Departmental Operations Subcommittee, House Committee on Agriculture,
Room 1302 Longworth Building, Washington, D.C.

Dear SIR: It is my understanding that on Wednesday, June 10th you are to hold hearings on HR 13631, a plant variety protection act.

² The trouble abroad may be very painful to U.S. citizens losing foreign rights, but our new law will not add to their woes. Article 2 of the Paris Convention (to which we are not a party) provides that if a member state has two types of law "it may only provide one of them" for a given species. Reason would indicate that this was intended to mean: "it is not required to provide them both to be available under the treaty". There may have been a translation difficulty. We are frequently told by a German that we "must not" furnish a certified copy when he means that we *need* not do so.

I have worked in the seed business all my life, and have observed the working of the plant patent acts in several of the European Countries through a period of years. I have served on the Breeders' Rights Study Committee of the American Seed Trade Association, and both personally and in behalf of this association of hybrid corn producers we want to go on record as supporting HR 13631, and urging your committee to take favorable action toward bringing it to the attention of the Committee on Agriculture and to the floor of the House of Representatives for action. I will not, in this letter, attempt to give the many reasons why this act should be passed, as I am sure these will be brought out in the hearings on June 10th.

Very truly yours,

GEO. M. STRAYER, *Secretary.*

TEXAS CERTIFIED SEED PRODUCERS, INC.,
Waco, Tex., June 10, 1970.

Hon. ELIGIO DE LA GARZA,
*House Agriculture Committee,
Subcommittee on Departmental Operations,
Longworth Building, Washington, D.C.*

MY DEAR CONGRESSMAN DE LA GARZA: The Texas Certified Seed Producers, Incorporated, with a membership of more than 300 from all areas of Texas, representing the breeding and production of certified and registered seed of all crops, endorses the statements by the Texas Seedmen's Association and the American Seed Trade Association in support of HR 13631.

This organization had an active part in developing HR 13631, and without reservation believe it is most important that it be enacted into law for the future welfare of the American farmer and the consumer.

Sincerely,

DOUG CONLEE, *President.*

TEXAS SEEDMEN'S ASSOCIATION,
June 10, 1970.

Re public hearing June 10, 1970—HR 13631.

Hon. ELIGIO DE LA GARZA,
House Agricultural Committee, Subcommittee on Departmental Operations, Longworth Building, Washington, D.C.

MY DEAR CONGRESSMAN DE LA GARZA: The seed trade in Texas wishes to file the following statement with the House Committee on Agriculture Departmental Operations Subcommittee in support of HR 13631. We request this be made a part of the public hearing proceedings.

This organization has a membership of over 260, with representation in most areas of the state, representing the marketing phase of the seed industry. The Board of Directors voted unanimously to support HR 13631.

American agriculture without question has contributed greatly to the welfare of the American people and to many of our allies. There has been a combination of several factors responsible for this apparent success. Those of us in agriculture are proud to be a part of this great industry. However, as leaders we must accept the responsibilities to continue improving agriculture for the sake of the men and women who till the soil and the Americans who consume and wear the products of the soil in years to come. We know there are many unanswered questions toward a more productive agriculture at a cheaper per unit price, all to the benefit of the American people. We also recognize there are surpluses in some of our crops; but, we question if the rate of technological development is keeping pace with the increase in population. Scientific questions, especially in plant breeding, cannot be solved with any predictable accuracy to increase food production after the demand has been created. These answers must precede our population growth or face possible shortages of food and fiber.

Private and public plant breeders have been doing all within their financial resources to meet the many challenges which only a plant breeder can understand.

Just as in many modern industries, plant breeding has become more complex, more costly, and requires an ever expanding, highly technical research program. The consumers of planting seeds are demanding improved varieties of all crops and forages that reduce the risks of production and reduce the per unit cost of production. Increased yield, disease and insect resistance, plant design for me-

chanical harvesting, fiber qualities to fit textile needs, new sources of human foods, new sources of industrial raw materials are only a few of the many demands of plant breeders.

Sound management dictates that the investment of research funds in any business must be based on the prospect of a reasonable return on the investment, providing the developed products are of value to the consumer. Industrial inventors, authors, composers and artists have long had the right to protect their creations. Plant breeders who are plant innovators and have no protection have contributed, in our opinion, more to this state's economy than many of those who enjoy protection for their creations.

HR 13631 will provide the incentive for those presently engaged in plant breeding to expand their research programs. We would see the development of new plant breeding firms and the hesitancy to invest corporate funds in commercial plant breeding programs would disappear. As a result, the farmer and the consumer will be the principal benefactor.

Plant breeders want to do more for agriculture. They can do more for agriculture provided a vehicle is created that will give them the opportunity. HR 13631, in our opinion, will provide the incentive, and opportunity plant breeders need to be of greater service to American agriculture.

This organization also endorses the statement submitted to the House Committee on Agriculture Departmental Operations Subcommittee on June 10 by the American Seed Trade Association in support of HR 13631.

Sincerely,

EDGAR BULLARD, *President.*

NATIONAL COTTONSEED PRODUCTS ASSOCIATION, INC.,
Memphis, Tenn., June 17, 1970.

HON. ELIGIO DE LA GARZA,
*Subcommittee on Department Operations of House Committee on Agriculture,
 U.S. House of Representatives, Washington, D.C.*

Dear Kika: At our Board of Directors Meeting on May 14, 1968, I presented a statement of policy with respect to the rights of the breeders of cotton planting seed. On motion duly made and seconded, the Board approved the adoption of this statement as follows:

"The National Cottonseed Products Association reaffirms its long standing practice of supporting efforts for the improvement of varieties and the quality of cotton planting seed; in addition, it supports legislation to establish an effective, equitable and workable system of plant breeders' rights; and it offers to cooperate with other groups, when appropriate, in efforts to improve variety testing and the breeding, release, and distribution of cotton planting seed which will best serve the interests of farmers and the entire cotton industry."

In accordance with the above, I wish to place the National Cottonseed Products Association, Inc. on record with your subcommittee as supporting and endorsing H. R. 13631.

Very truly yours,

FRED H. HUSBANDS, *Executive Vice President.*

SOCIETY OF AMERICAN FLORISTS AND ORNAMENTAL HORTICULTURISTS,
Alexandria, Va., June 19, 1970.

Congressman ELIGIO DE LA GARZA,
*Chairman, Special Subcommittee on Departmental Operations, Longworth House
 Office Building, Washington, D.C.*

DEAR CONGRESSMAN DE LA GARZA: The Society of American Florists, the national trade association for floriculture, wishes to file this written statement for consideration for the record of the hearing on H.R. 13631, the "Plant Variety Protection Act."

The Society supports the concept of H.R. 13631. The vehicle of protection provided for in H.R. 13631 is, in our judgment, long overdue. Agriculture, including floriculture and ornamental horticulture, has benefited immeasurably from the initiative and dedication of developers of new varieties of plants in our country. Up to this time, there has been no Federal law which would provide plant breeders with the right of legal protection for sexually reproduced plants which they develop or discover. Plant breeding represents a vital part of the economy of agriculture.

New and ever-expanding breeding programs will be required to fill the future needs for everyone from the farmer/grower to the consumer. There is no question but what the Plant Patent Act of 1930, which provides patent protection for asexually reproduced plants, has stimulated commercial plant breeding of asexually reproduced plants.

The industry of floriculture and the American public have benefited immeasurably from this increased interest on the part of plant breeders.

There are certain varieties of commercial floriculture products which are sexually reproduced. We feel that if H.R. 13631 were enacted into law, there would be an increased activity on the part of plant breeders to develop new and better varieties for the benefit of the American public and the industry.

We respectfully urge that your Committee act swiftly and favorably on H.R. 13631, the "Plant Variety Protection Act," as we are convinced it is in the best interest of the public, the industry of floriculture, and agriculture in general.

Sincerely,

JOHN H. WALKER, *Executive Director.*

Mr. PURCELL. Is American Farm Bureau Federation for this legislation? If so I want it noted in bold print.

Mr. DE LA GARZA. It says approval of the legislation but with recommended modifications.

Mr. ALLENBY WHITE. I would like to point out that we have had this bill under study for 10 years. During the course of this time we have carefully studied the patent law. During the course of this we have carefully studied the convention at Paris that Mr. Klein referred to. We have carefully considered the interrelationship between the law we are proposing here today and these two other bodies of legislation.

We see no basic conflicts in these things. We believe that the advice we have received from our counsel entitles us to this conviction.

Mr. DE LA GARZA. Thank you very much, sir. I am happy to hear that statement. The committee will nonetheless proceed cautiously and further study the matter so all aspects can be covered.

We wish you gentlemen a good hearing in the Senate tomorrow. With that we stand in recess subject to call of the Chair.

(Whereupon, at 12 noon the hearing was recessed.)

(H.R. 13424 by Mr. Gubser; H.R. 13631 by Messrs. Purcell, Horton, Leggett, Hungate, Teague of Texas, Dorn, Abernethy, Fisher, Talcott, Biester, Hansen of Idaho, Winn, Scherle, Daddario, Mahon, Mrs. Reid of Illinois, Zablocki, Smith of Iowa, Michel, Montgomery, Brown of Ohio, Gonzalez, Teague of California, and Mrs. May; H.R. 13658 by Messrs. Purcell, Reuss, Wyatt, MacGregor, and Quie; H.R. 13901 by Mr. Arends; H.R. 14332 by Mr. Frey; and H.R. 15226 by Mr. McCloskey; are similar bills, the text of which follows:)

91ST CONGRESS
1ST SESSION

H. R. 13631

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 4, 1969

Mr. PURCELL (for himself, Mr. HORTON, Mr. LEGGETT, Mr. HUNGATE, Mr. TEAGUE of Texas, Mr. DORN, Mr. ABERNETHY, Mr. FISHER, Mr. TALCOTT, Mr. BIESTER, Mr. HANSEN of Idaho, Mr. WINN, Mr. SCHERLE, Mr. DADDARIO, Mr. MAHON, Mrs. REID of Illinois, Mr. ZABLOCKI, Mr. SMITH of Iowa, Mr. MICHEL, Mr. MONTGOMERY, Mr. BROWN of Ohio, Mr. GONZALEZ, Mr. TEAGUE of California, and Mrs. MAY) introduced the following bill; which was referred to the Committee on Agriculture

A BILL

To encourage the development of novel varieties of sexually reproduced plants and making them available to the public, by making protection available to those who breed, develop or discover them, thereby promoting progress in the useful art of agriculture.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—PLANT VARIETY PROTECTION

OFFICE

Chapter	Section
1. Organization and Publications.....	1
2. Legal Provisions as to the Plant Variety Protection Office.....	21
3. Plant Variety Protection and Rights.....	31

1 **Chapter 1.—ORGANIZATION AND PUBLICATIONS**

2 **Section 1. Establishment.**

3 There is hereby established in the Department of Agri-
4 culture a bureau to be known as the Plant Variety Protec-
5 tion Office, which shall have the functions set forth in this
6 Act.

7 **Sec. 2. Seal.**

8 The Plant Variety Protection Office shall have a seal
9 with which documents and certificates evidencing plant
10 variety protection shall be authenticated.

11 **Sec. 3. Officers and Employees.**

12 (a) There shall be in the Plant Variety Protection
13 Office a Commissioner of Plant Variety Protection, one As-
14 sistant Commissioner, and an appropriate staff. The Assistant
15 Commissioner shall perform the duties pertaining to the
16 office of Commissioner assigned to him by the Commissioner
17 and shall fill the office of Commissioner during a vacancy in
18 that office or in the absence of the Commissioner. The Com-
19 missioner of Plant Variety Protection shall be appointed by
20 the Secretary.

21 (b) The Secretary is authorized to fix the per annum
22 rate of basic compensation of each staff member in the Plant
23 Variety Protection Office at not in excess of the maximum
24 scheduled rate provided for positions in level V of section
25 5316 of title 5, United States Code.

**1 Sec. 4. Restrictions on Employees as to Interest in Plant
2 Variety Protection.**

3 Employees of the Plant Variety Protection Office, in-
4 cluding the Commissioner and Assistant Commissioner, shall
5 be ineligible during the periods of their employment, to apply
6 for plant variety protection and to acquire directly or in-
7 directly, except by inheritance or bequest, any right or
8 interest in any matters before that office. This section shall
9 not apply to members of the Plant Variety Protection Board
10 who are not otherwise employees of the Plant Variety
11 Protection Office.

12 Sec. 5. Bond of Commissioner and Employees.

13 The Commissioner and such other employees as he des-
14 ignates, before entering upon their duties, shall severally give
15 bond, with sureties, the former in the sum of \$10,000, and
16 the latter in sums prescribed by the Commissioner, condi-
17 tioned for the faithful discharge of their respective duties and
18 that they shall render to the proper officers of the Treasury
19 a true account of all money received by virtue of their
20 offices.

21 Sec. 6. Duties of Commissioner, Regulations.

22 The Commissioner, who shall report directly to the Sec-
23 retary, shall superintend or perform all duties required here-
24 under, and he shall have charge of property belonging to
25 the Plant Variety Protection Office. He may establish regula-

1 tions, not inconsistent with law, for the conduct of proceed-
2 ings in the Plant Variety Protection Office after consultations
3 with the Plant Variety Protection Board. All regulations
4 issued pursuant to this title shall be subject to the approval of
5 the Secretary.

6 **Sec. 7. Plant Variety Protection Board.**

7 (a) APPOINTMENT.—The Secretary shall appoint a
8 Board on plant variety protection. The Board shall consist
9 of individuals who, as a group, are expert in various areas of
10 varietal development covered by this Act. Membership of
11 the Board shall be drawn approximately equally from the
12 private or seed industry sector and from the sector of govern-
13 ment or the public. The Commissioner or his designee shall
14 act as chairman of the Board without voting rights except
15 in the case of ties.

16 (b) FUNCTIONS OF BOARD.—The functions of the Plant
17 Variety Protection Board shall include:

18 (1) Advising the Commissioner concerning the
19 adoption of Rules and Regulations to facilitate the proper
20 administration of this Act; and

21 (2) Making advisory decisions on all appeals from
22 the Examiner. The Board shall determine whether to
23 act as a full Board or by panels it selects; and whether
24 to review advisory decisions made by a panel. For serv-
25 ice on such appeals, the Board may select, as temporary

members, experts in the area to which the particular appeal relates.

(3) Advising the Secretary on all questions under section 44.

(c) COMPENSATION OF BOARD.—The members of the Plant Variety Protection Board shall serve without compensation except for standard government reimbursable expenses.

Sec. 8. Library.

The Commissioner shall maintain a library of scientific and other works and periodicals, both foreign and domestic, in the Plant Variety Protection Office to aid the officers in the discharge of their duties.

Sec. 9. Register of Protected Plant Varieties.

The Commissioner shall maintain a register of published specifications of United States protected plant varieties and a file of such other scientific and technical information as may be necessary or practicable.

Sec. 10. Publications.

(a) The Commissioner may publish, or cause to be published, in such format as he shall determine to be suitable, the following:

(1) The specifications for plant variety protection including drawings and photographs.

(2) The Official Journal of the Plant Variety Protection Office, including annual indices.

1 (3) Pamphlet copies of the plant variety protection
2 laws and rules of practice and circulars or other publica-
3 tions relating to the business of the Office.

4 (b) The Plant Variety Protection Office may print the
5 heading of the drawings or photographs for protected plant
6 varieties for the purpose of photolithography and any lithog-
7 raphy to appear on the same page.

8 (c) The Commissioner may (1) establish public facili-
9 ties for the searching of plant variety protection records and
10 materials, and (2) from time to time, as through an informa-
11 tion service, disseminate to the public those portions of the
12 technological and other public information available to or
13 within the Plant Variety Protection Office to encourage inno-
14 vation and promote the progress of the useful arts.

15 (d) The Commissioner may exchange any of the pub-
16 lications specified for publications desirable for the use of the
17 Plant Variety Protection Office. The Commissioner may
18 exchange copies of specifications, drawings, and photographs
19 of United States protected plant varieties for copies of speci-
20 fications, drawings, and photographs of applications and pro-
21 tected plant varieties of foreign countries.

22 **Sec. 11. Copies for Public Libraries.**

23 The Commissioner may supply printed copies of speci-
24 fications, drawings, and photographs of protected plant varie-

1 ties to public libraries in the United States which shall main-
2 tain such copies for the use of the public.

3 **Chapter 2.—LEGAL PROVISIONS AS TO THE PLANT**
4 **VARIETY PROTECTION OFFICE**

5 **Sec. 21. Day for Taking Action Falling on Saturday, Sun-**
6 **day, or Holiday.**

7 When the day, or the last day, for taking any action or
8 paying any fee in the United States Plant Variety Protection
9 Office falls on Saturday, Sunday, a holiday within the District
10 of Columbia, or on any other day the Plant Variety Protec-
11 tion Office is closed for the receipt of papers, the action may
12 be taken or the fee paid, on the next succeeding business day.

13 **Sec. 22. Form of Papers Filed.**

14 The Commissioner may by regulations prescribe the form
15 of papers to be filed in the Plant Variety Protection Office.

16 **Sec. 23. Testimony in Plant Variety Protection Office**
17 **Cases.**

18 The Commissioner may establish regulations for taking
19 affidavits, depositions, and other evidence required in cases
20 before the Plant Variety Protection Office. Any officer author-
21 ized by law to take depositions to be used in the courts of the
22 United States, or of the State where he resides, may take such
23 affidavits and depositions, and swear the witnesses. If any

1 person acts as a hearing officer by authority of the Commis-
2 sioner, he shall have like power.

3 **Sec. 24. Subpenas, Witnesses.**

4 (a) The clerk of any United States court for the district
5 wherein testimony is to be taken in accordance with regula-
6 tions established by the Commissioner for use in any con-
7 tested case in the Plant Variety Protection Office shall, upon
8 the application of any party thereof, issue a subpoena for any
9 witness residing or being within such district or within one
10 hundred miles of the stated place in such district, command-
11 ing him to appear and testify before an officer in such
12 district authorized to take depositions and affidavits, at the
13 time and place stated in the subpoena. The provisions of the
14 Federal Rules of Civil Procedure relating to the attendance
15 of witnesses and the production of documents and things shall
16 apply to contested cases in the Plant Variety Protection
17 Office insofar as consistent with such regulations.

18 (b) Every witness subpoenaed or in attendance shall be
19 allowed the fees and traveling expenses allowed to witnesses
20 attending the United States district courts.

21 (c) A judge of a court whose clerk issued a subpoena
22 may enforce obedience to the process or punish disobedience
23 as in other like cases, on proof that a witness, served with
24 such subpoena, neglected or refused to appear or to testify.

1 No witness shall be deemed guilty of contempt for disobeying
2 such subpoena unless his fees and traveling expenses in going
3 to, and returning from, one day's attendance at the place
4 of examination, are paid or tendered him at the time of the
5 service of the subpoena; nor for refusing to disclose any
6 secret matter except upon appropriate order of the court
7 which issued the subpoena.

8 **Sec. 25. Effect of Defective Execution.**

9 Any document to be filed in the Plant Variety Protec-
10 tion Office and which is required by any law or regulation to
11 be executed in a specified manner may be provisionally ac-
12 cepted by the Commissioner despite a defective execution,
13 provided a properly executed document is submitted within
14 such time as may be prescribed.

15 **Sec. 26. Regulations for Practice Before the Office.**

16 The Commissioner, subject to the approval of the Secre-
17 tary, may prescribe regulations governing the recognition
18 and conduct of persons representing applicants or other par-
19 ties before the Plant Variety Protection Office. The Com-
20 missioner may, after notice and opportunity for a hearing
21 suspend or exclude, either generally or in any particular
22 case, from further practice before the Office of Plant Variety
23 Protection any person shown to be incompetent or disrepu-
24 table or guilty of gross misconduct.

1 Sec. 27. Unauthorized Practice.

2 Anyone who engages in direct or indirect practice
3 before the Office of Plant Variety Protection while sus-
4 pended or excluded under section 26, or without being
5 either authorized to practice law where he maintains his
6 office, or authorized by the Commissioner on the basis
7 of having established his ability and character, shall be
8 liable in a civil action for the return of all money re-
9 ceived, and for compensation for damage done by such
10 person and also may be enjoined from such practice.
11 However there shall be no liability for damage if such
12 person establishes that the work was done competently
13 and without negligence. This section does not apply to
14 anyone who, without a claim of self sufficiency, works
15 under the supervision of another, who is thus authorized
16 and is the responsible party; nor to anyone who estab-
17 lishes that he acted only on behalf of any employer by
18 whom he was regularly employed.

19 Chapter 3.—PLANT VARIETY PROTECTION FEES

20 Sec. 31. Plant Variety Protection Fees.

21 (a) The Commissioner shall charge the following fees:

22 (1) On filing each application for a certificate of
23 plant variety protection, \$50.

24 (2) For issuing each certificate of plant variety

1 protection, \$50 unless the drawing or photograph to be
2 reproduced is in color and in that event, \$75.

3 (3) On appeal under section 63 of this title, for
4 the first time from the examiner to the Plant Variety
5 Protection Board, \$50. In addition, when consideration
6 by the Plant Variety Protection Board is reached, \$50.

7 (4) For certificate under section 85 or under sec-
8 tion 86 of this title, \$15.

9 (5) As available: For uncertified copies of specifi-
10 cation, drawing, and photographs which have been pub-
11 lished, such fees and charges as the Commissioner may
12 establish.

13 (6) For recording every assignment, agreement,
14 or other paper relating to the property in a plant variety
15 protection application, \$10: where the document re-
16 lates to more than one plant variety protection applica-
17 tion, \$1 for each additional item.

18 (7) For each certificate certifying copies of records,
19 \$1.

20 (8) For delayed payment or other action when
21 permitted upon payment of special fee, \$10.

22 (b) The Commissioner may reduce any fees under this
23 section found to be in excess of direct costs.

24 (c) The Commissioner may establish charges for copies

1 of records, publications, or services furnished by the Plant
2 Variety Protection Office, not specified above.

3 **Sec. 32. Payment of Plant Variety Protection Fees; Re-**
4 **turn of Excess Amounts.**

5 All fees shall be paid to the Commissioner, who shall
6 deposit the same in the Treasury of the United States in
7 such manner as the Secretary of the Treasury directs, and
8 the Commissioner may refund any sum paid by mistake
9 or in excess of the fee required.

10 **TITLE II—PROTECTABILITY OF PLANT**
11 **VARIETIES AND CERTIFICATES OF PRO-**
12 **TECTION**

Chapter	Section
4. Protectability of Plant Varieties.....	41
5. Applications: Form, Who May File, Relating Back, Confiden- tiality	51
6. Examination: Response Time, Initial Appeals.....	61
7. Appeals to Courts and Other Review.....	71
8. Certificates of Plant Variety Protection.....	81
9. Reexamination after Issue, and Contested Proceedings.....	91

13 **Chapter 4.—PROTECTABILITY OF PLANT**
14 **VARIETIES**

15 **Sec. 41. Definitions and Rules of Construction.**

16 The definitions and rules of construction set forth in this
17 section apply for the purposes of this title.

18 (b) The term “novel variety” may be represented by,
19 without limitation, seed, transplants, clones, and plants, and
20 is satisfied if there is:

21 (1) Distinctness in the sense that the variety clearly

1 differs by one or more identifiable morphological, physio-
2 logical or other characteristics, as to which a difference in
3 genealogy may contribute evidence, from all prior varie-
4 ties of public knowledge at the date of determination
5 within the provisions of section 42; and

6 (2) Uniformity in the sense that any variations are
7 describable, predictable and commercially acceptable;
8 and

9 (3) Stability in the sense that the variety may be
10 sexually reproduced with its distinctive characteristics,
11 with a reasonable degree of reliability, or to a degree
12 comparable to that of other varieties of the same kind.

13 (c) The terms "United States" and "this country"
14 mean the United States of America, its territories and posses-
15 sions, and the Commonwealth of Puerto Rico.

16 (d) The term "effective filing date," includes the filing
17 date to which an application for plant variety protection is
18 entitled under the provisions of section 55 of this title.

19 (e) The term "effective filing date actually in the United
20 States," means the earliest filing date to which an application
21 for plant variety protection is entitled under the provisions of
22 section 55 (b) of this title, excluding section 55 (a) .

23 (f) The term "kind" means one or more related species
24 or subspecies singly or collectively known by one common
25 name, for example, soybean, flax, carrot, or radish.

1 (g) The term "date of determination" means the date
2 when there has been at least tentative determination that the
3 variety has been sexually reproduced with recognized char-
4 acteristics making it a novel variety, whether or not the
5 novelty thereof has been determined.

6 (g) The terms "breeder" and "discoverer" shall each
7 include the other as shall the terms "breed," "develop" and
8 "discover." The breeders or discoverers are those who direct
9 the final breeding, creating the novel variety or discover the
10 novel variety and, in either case, direct the determination
11 required by subsection (f).

12 (h) The term "sexually reproduced" shall include re-
13 peated sexual production through the reproduction system
14 designated by the breeder.

15 (i) The term "proprietor" when distinguished from
16 "breeder" means the employer when the breeder's work was
17 done for hire without contrary agreement, or other owner
18 by assignment or operation of law; but otherwise may in-
19 clude the applicant until his position is taken by his successor
20 in title, after which, the term "applicant" may mean
21 proprietor.

22 (j) The term "basic seed" means the seed planted to
23 produce certified or commercial seed.

24 (k) The term "testing" includes the period during
25 which there is testing of seed or other sexually reproducible

1 plant material, before any sale thereof, even though such
 2 material may be given out, provided the purpose is for ex-
 3 perimental testing on behalf of the proprietor, with observa-
 4 tion by or reported to the proprietor (even though the crop
 5 is used or sold for other than seed).

6 (1) The term "public variety" means a variety in this
 7 country which is known or used, other than by the breeders
 8 and their associates, or on sale; if other than secretly or for
 9 the purpose of experimenting or testing; or as individual
 10 plants not known to be either sexually self-reproducible or
 11 repeatedly producible sexually at will.

12 (1m) A variety described in a publication as specified
 13 in section 42 (a) is "effectively available to workers in this
 14 country" if a source from which it can be purchased is indi-
 15 cated in a publication or readily determinable or if the publi-
 16 cation teaches how to produce the variety from source-ma-
 17 terial available to workers in this country.

18 **Sec. 42. Right to Plant Variety Protection; Plant Varieties**
 19 **Protectable.**

20 Whoever is the breeder or the discoverer of any novel
 21 variety of sexually reproduced plant, except as excluded in
 22 section 45, or his successor in title, shall be entitled to plant
 23 variety protection therefor, subject to the conditions and re-
 24 quirements of this title unless one of the following bars exists:

16

1 (1) Before the date of determination thereof by the
2 breeder, or more than one year before the effective filing
3 date of the application therefor, the variety was (A) a
4 public variety in this country, or (B) effectively avail-
5 able to workers in this country and adequately described
6 by a publication reasonably deemed a part of the public
7 technical knowledge in this country which description
8 must include a disclosure of the principal characteristics
9 by which the variety is distinguished.

10 (2) The variety, though not in use or on sale in
11 this country, was in use or on sale elsewhere, other than
12 secretly or for the purpose of experimenting or testing,
13 by or in the knowledge of the applicant or his predeces-
14 sor in title, or their agents or representatives, more than
15 one year before the effective date of the application there-
16 for.

17 (3) An application for protection of the variety
18 based on the same breeders acts, was filed in a foreign
19 country by the proprietor or his privies more than one
20 year before the effective filing date actually in the United
21 States.

22 (4) Another is entitled to an earlier date of de-
23 termination for the variety; provided however, that the
24 benefit of a date of determination can be lost by not con-

1 continuing a program of development and testing to com-
2 mercialization.

3 **Sec. 43. Reciprocity Limits.**

4 Protection under the Act shall be limited to proprietors
5 who are nationals of the United States, except where this lim-
6 itation would violate a treaty and except that proprietors
7 who are nationals of a foreign state in which they are dom-
8 icated shall be entitled to so much of the protection here
9 afforded as is afforded by said foreign state to nationals of the
10 United States for the same genus and species.

11 **Sec. 44. Public Interest In Wide Usage.**

12 The Secretary may declare a protected variety open to
13 use on a basis of equitable remuneration to the proprietor,
14 not less than a reasonable royalty, when he determines that
15 such declaration is necessary in order to insure an adequate
16 supply of fiber, food or feed in this country and that the
17 proprietor is not supplying the public needs at a price which
18 may reasonably be deemed fair. Such declaration may be,
19 with or without limitation, with or without designation of
20 what the remuneration is to be; and shall be subject to re-
21 view as under section 71 or 72 (any finding that the price
22 is not reasonable being reviewable), and shall remain in
23 effect not more than two years. In the event litigation is

1 required to collect such remuneration, a higher rate may be
2 allowed by the Court.

3 **Sec. 45. Exclusions From Eligibility for Protection.**

4 Protection under this Act shall not be available for:

5 (a) Fungi and Bacteria,

6 (b) Hybrids.

7 **Chapter 5.—APPLICATIONS: FORM, WHO MAY FILE,**
8 **RELATING BACK, CONFIDENTIALITY**

9 **Sec. 51. Application for Recognition of Plant Variety**
10 **Rights.**

11 (a) An application for a certificate of Plant Variety
12 Protection may be filed by either the breeder or the pro-
13 prietor of the variety sought to be protected. The applica-
14 tion shall be made in writing to the Commissioner, shall be
15 signed by or on behalf of the applicant, and shall be accom-
16 panied by the prescribed fee. An application filed by a per-
17 son not the breeder shall state the basis on which it is filed.

18 (b) An error as to the naming of the breeder, without
19 deceptive intent, may be corrected at any time, in accordance
20 with regulation established by the Commissioner.

21 **Sec. 52. Content of Application.**

22 An application for a certificate recognizing plant variety
23 rights shall contain:

24 (1) The name of the variety except that a tempo-

1 rary designation will suffice until the certificate is to be
2 issued.

3 (2) A description of the variety setting forth its
4 novelty and a description of the genealogy and breeding
5 procedure, when known. The Commissioner may require
6 amplification, including the submission of adequate
7 photographs or drawings or plant specimens, if the
8 description is not adequate or as complete as is reason-
9 ably possible, and submission of records or proof of
10 proprietorship or of allegations made in the application.

11 A proprietor may add to or correct the description at
12 any time, before the certificate is issued, upon a showing
13 acceptable to the Commissioner that the revised descrip-
14 tion is retroactively accurate. Courts shall protect others
15 from any injustice which would result. The Commis-
16 sioner may accept records of the originator and of any
17 official seed certifying agency in this country as evidence
18 of stability where applicable.

19 (3) A declaration that a viable sample of basic seed
20 necessary for propagation of the variety will be deposited
21 and replenished periodically in a public repository in
22 accordance with regulations to be established hereunder.
23 This declaration may be added by amendment.

1 **Sec. 53. Joint Breeders.**

2 (a) When two or more persons are the breeders, one
3 (or his successor) may apply, naming the others.

4 (b) The Commissioner, after such notice as he may
5 prescribe, may issue a certificate of plant variety protection
6 to the applicant and such of the other breeders as may have
7 subsequently joined in the application.

8 **Sec. 54. Death or Incapacity of Breeder.**

9 Legal representatives of deceased breeders and of those
10 under legal incapacity may make application for plant vari-
11 ety protection upon compliance with the requirements and
12 on the same terms and conditions applicable to the breeder
13 or proprietor.

14 **Sec. 55. Benefit of Earlier Filing Date.**

15 (a) An application for plant variety protection for a
16 variety filed in this country by a person who has, or whose
17 predecessor or successor in title has, previously filed an
18 application for plant variety protection for the same variety
19 by the same breeder in a foreign country which affords simi-
20 lar privileges in the case of applications filed in the United
21 States or to citizens of the United States, shall have the same
22 effect as the same application would have if filed in the
23 United States on the date on which the application for plant
24 variety protection for the same variety was first filed in any
25 foreign country, if the application in this country is filed

1 within twelve months from the earliest date on which such
2 foreign application was filed. No application shall be entitled
3 to a right of priority under this section, unless the applicant
4 designates the foreign application in his application or by
5 amendment thereto and, if required by the Commissioner,
6 furnishes such copy, translation or both, as the Commissioner
7 may specify.

8 (b) An application for a certificate of plant variety pro-
9 tection for the same variety as was the subject of an applica-
10 tion previously filed in the United States by or on behalf
11 of the same proprietor, or by his predecessor in title, shall
12 have the same effect as to such variety as though filed on
13 the date of the prior application if filed before the issuance
14 of the certificate or termination of proceedings on the first
15 application or on an application similarly entitled to the
16 benefit of the filing date of the first application and if it con-
17 tains or is amended to contain a specific reference to the
18 earlier filed application.

19 (c) A later application shall not by itself establish that
20 a characteristic newly described was in the variety at the
21 time of the earlier application.

22 **Sec. 56. Confidential Status of Application:**

23 Applications for plant variety protection and their con-
24 tents shall be kept in confidence by the Plant Variety Pro-
25 tection Office, by the Board, and by the offices in the De-

1 partment of Agriculture to which access may be given under
2 regulations. No information concerning the same shall be
3 given without the authority of the applicant or proprietor,
4 unless necessary under special circumstances as may be de-
5 termined by the Commissioner, except that the Commis-
6 sioner may publish the variety names designated in applica-
7 tions, stating the kind to which each applies.

8 **Sec. 57. Publication.**

9 The Commissioner may establish regulations for the
10 publication of pending applications at the request of the
11 proprietor.

12 **Chapter 6.—EXAMINATION, RESPONSE TIME, INI-**
13 **TIAL APPEALS**

14 **Sec. 61. Examination of Application.**

15 The Commissioner shall cause an examination to be
16 made of the application and if on such examination it is
17 determined that the applicant is entitled to plant variety
18 protection under the law, the Commissioner shall issue a
19 notice of allowance of plant variety protection therefor as
20 hereinafter provided.

21 **Sec. 62. Notice of Refusal; Reconsideration.**

22 (a) Whenever an application is refused, or any objection
23 or requirement made by the examiner, the Commissioner
24 shall notify the applicant thereof, stating the reasons therefor,
25 together with such information and references as may be

1 useful in judging the propriety of continuing the prosecution
2 of the application; and if after receiving such notice the
3 applicant requests reconsideration, with or without amend-
4 ment, the application shall be reconsidered.

5 (b) For taking appropriate action after a refusal, an
6 applicant shall be allowed six months, or such other time as
7 the Commissioner in exceptional circumstances shall set in the
8 refusal, or such time as he may allow as an extension. With-
9 out such extension, action may be taken up to three months
10 late by paying a delayed filing fee.

11 **Sec. 63. Initial Appeal.**

12 When an application for plant variety protection has been
13 refused by the examiner, the applicant may appeal from the
14 decision of the examiner to the Commissioner. The Commis-
15 sioner shall seek the advice of the Plant Variety Protection
16 Board on all appeals, before deciding the appeal.

17 **Chapter 7.—APPEALS TO COURTS AND OTHER** 18 **REVIEW**

19 **Sec. 71. Appeals.**

20 From decisions made on appeal within the Plant Variety
21 Protection Office, and also under the provisions of section 92,
22 appeal may be taken under the Federal Rules of Appellate
23 Procedure. The Court of Customs and Patent Appeals shall
24 have jurisdiction, without limitation to that court.

1 **Sec. 72. Civil Action Against Commissioner.**

2 An applicant dissatisfied with a decision under section 63
3 or 91 of this title, may, as an alternative to appeal, have
4 remedy by civil action against the Commissioner in the
5 United States District Court for the District of Columbia.
6 Such action shall be commenced within sixty days after such
7 decision or within such further time as the Commissioner
8 allows. The court may, in the case of review of a decision by
9 the Commissioner refusing plant variety protection, adjudge
10 that such applicant is entitled to receive a certificate of plant
11 variety protection for his variety as specified in his applica-
12 tion as the facts of the case may appear, on compliance with
13 the requirements of this Act.

14 **Sec. 73. Appeal or Civil Action in Contested Cases.**

15 (a) A party to a proceeding under section 92 of this
16 title, dissatisfied with the decision, may take an appeal under
17 section 71 or may have remedy by civil action if commenced
18 within sixty days after such decision or within such further
19 time as the Commissioner allows. A party contemplating ap-
20 peal as provided herein shall notify any adverse party of his
21 intention and such adverse party, not the Commissioner, shall
22 have the right, by notice served within ten days of the notice
23 to him, to elect that any review shall be by civil action. In
24 such suits the record in the Plant Variety Protection Office
25 shall be admitted on motion of either party upon the terms

1 and conditions as to costs, expenses, and the further cross-
2 examination of witnesses, as the court imposes, without prej-
3 udice to the right of the parties to take further testimony.
4 The testimony and exhibits of the record in the Plant Variety
5 Protection Office when admitted shall have the same effect as
6 if originally taken and produced in the suit.

7 (b) Such suit may be instituted against the party in
8 interest as shown by the record of the Plant Variety Protec-
9 tion Office at the time of the decision complained of, but any
10 party in interest may become a party to the action. If there
11 be adverse parties residing in a plurality of districts not em-
12 braced within the same State, or an adverse party residing
13 in a foreign country, the United States District Court for the
14 District of Columbia, or any United States district court to
15 which it may transfer the case, shall have jurisdiction and
16 may issue summons against the adverse parties directed to
17 the marshal of any district in which any adverse party resides.
18 Summons against adverse parties residing in foreign countries
19 may be served by publication or otherwise as the court
20 directs. The Commissioner shall not be made a party but he
21 shall have the right to intervene. Judgment of the court in
22 favor of the right of an applicant to plant variety protection
23 shall authorize the Commissioner to issue a certificate of plant
24 variety protection on the filing in the Plant Variety Protec-

tion Office of a certified copy of the judgment and on compliance with the requirements of this Act.

Chapter 8.—CERTIFICATES OF PLANT VARIETY PROTECTION

Sec. 81. Plant Variety Protection.

(a) If it appears that the proprietor is entitled to plant variety protection under the law, a written notice of allowance shall be given or mailed to the proprietor. The notice shall specify the sum, constituting the issue fee, which shall be paid within one month thereafter.

(b) Upon timely payment of this sum, and provided that deposit of seed has been made in accordance with section 52 (c), the certificate of plant variety protection shall issue.

(c) If any payment required by this Section is not timely made, but is submitted with the fee for delayed payment within nine months after the due date, or within such further time as the Commissioner may allow, it shall be accepted.

Sec. 82. How Issued.

A certificate of plant variety protection shall be issued in the name of the United States of America under the seal of the Plant Variety Protection Office, and shall be signed by the Commissioner or have his signature placed thereon, and shall be recorded in the Plant Variety Protection Office.

1 **Sec. 83. Contents and Term of Plant Variety Protection.**

2 (a) Every certificate of plant variety protection shall
3 certify that the breeder or proprietor, his heirs or assignees,
4 has the right, during the term of the plant variety protection,
5 to exclude others from selling the variety, or offering it
6 for sale, or reproducing it, or importing it, or exporting it,
7 or using it in producing (as distinguished from developing)
8 a hybrid or different variety therefrom, to the extent pro-
9 vided by this Act. If the proprietor so elects, the certificate
10 shall also specify that in the United States seed of the variety
11 shall be sold by variety name only as a class of certified
12 seed and, if specified, shall also conform to the number of
13 generations designated by the proprietor. Any rights, or all
14 rights except those elected under the preceding sentence,
15 may be waived; and the certificate shall conform to such
16 waiver. The Commissioner may at his discretion permit such
17 election or waiver to be made after certifiating and amend
18 the certificate accordingly, without retroactive effect.

19 (b) The term of plant variety protection shall expire
20 seventeen years from the date of issue of the certificate in
21 the United States. If the certificate is not issued within
22 three years from the effective filing date, the Commissioner
23 may shorten the term by the amount of time attributed to
24 the applicant.

1 (c) The term of Plant Variety Protection shall also ex-
2 pire if a proprietor fails to comply with regulations, in force
3 at the time of certificating, relating to replenishing seed in
4 a public repository: *Provided, however,* That this expira-
5 tion shall not occur unless notice is mailed to the proprietor
6 and he fails, within the time allowed thereafter, not less than
7 three months, to comply with said regulations, paying the
8 delayed fee in section 31 (a) (8).

9 **Sec. 84. Certificate of Correction of Plant Variety Protec-**
10 **tion Office Mistake.**

11 Whenever a mistake in certificating a protected plant
12 variety, incurred through the fault of the Plant Variety
13 Protection Office, is clearly disclosed by the records of the
14 Office, the Commissioner may issue a certificate of correc-
15 tion stating the fact and nature of such mistake, under seal,
16 without charge, to be recorded in the records of plant variety
17 protection. A copy thereof shall be attached to each copy
18 of the application of the plant variety protection and such
19 certificate shall be considered as part of the original certifi-
20 cate of plant variety protection. Every such certificate of
21 plant variety protection shall have the same effect and opera-
22 tion in law on the trial of action as if the same had been
23 originally issued in such corrected form. The Commissioner
24 may issue a corrected certificate of plant variety protection

1 without charge in lieu of and with like effect as a certificate
2 of correction.

3 **Sec. 85. Certificate of Correction of Applicant's Mistake.**

4 Whenever a mistake of a clerical or typographical na-
5 ture, or of minor character, or in the description of the
6 variety, which was not the fault of the Plant Variety Pro-
7 tection Office, appears in certificating a plant variety protec-
8 tion and a showing has been made that such mistake oc-
9 curred in good faith, the Commissioner may, upon payment
10 of the required fee, issue a certificate of correction, if the
11 correction unquestionably could have been made before the
12 certificate issued. Such certificate of plant variety protection
13 shall have the same effect and operation in law on the trial
14 of actions for causes thereafter arising as if the same had
15 been originally issued in such corrected form.

16 **Sec. 86. Correction of Named Breeder.**

17 An error as to the naming of a breeder in the applica-
18 tion, without deceptive intent, shall not affect validity of plant
19 variety protection and may be corrected at any time by the
20 Commissioner in accordance with regulations established by
21 him or upon order of a federal court before which the matter
22 is called in question. Upon such correction the Commissioner
23 shall issue a certificate accordingly. Such correction shall not
24 deprive a breeder of any rights he otherwise would have had.

1 **Chapter 9.—REEXAMINATION AFTER ISSUE, AND**
2 **CONTESTED PROCEEDINGS**

3 **Sec. 91. Reexamination After Issue.**

4 (a) Any person may, within five years after the issu-
5 ance of a certificate of plant variety protection, notify the
6 Commissioner in writing of facts which may have a bearing
7 on the protectability of the variety, and the Commissioner
8 may cause such plant variety protection to be reexamined
9 in the light thereof.

10 (b) Reexamination of plant variety protection under
11 this section and appeals shall be pursuant to the same pro-
12 cedures and with the same rights as for original examina-
13 tions. Abandonment of the procedure while subject to a rul-
14 ing against the retention of the certificate shall result in can-
15 cellation of the plant variety certificate thereon and notice
16 thereof shall be endorsed on copies of the specification of the
17 protected plant variety thereafter distributed by the Plant
18 Variety Protection Office.

19 (c) If a person acting under subsection (a), within the
20 time specified above, makes a prima facie showing of facts
21 needing proof, the Commissioner may direct that the reexami-
22 nation include such interparty proceedings as he shall
23 establish.

24 **Sec. 92. Priority Contest.**

25 (a) If the Commissioner determines that two applica-

1 tions of different breeders or proprietors may be based on the
2 same variety, he may:

3 (1) Initiate a priority contest on his own motion
4 whether or not one of the applications may have been
5 certificated; or

6 (2) Issue a certificate on the application having the
7 earliest effective filing date, with notice to all; or

8 (3) Issue a certificate naming both proprietors as
9 alternative owners, under a single variety name accept-
10 able to both.

11 (b) On request of one proprietor when a certificate has
12 been issued naming another proprietor as an owner or alter-
13 native owner, both having applied for protection on the same
14 variety, the Commissioner shall institute a priority contest.
15 except that a proprietor shall have forfeited his right to assert
16 priority for the purpose of obtaining plant variety protection
17 when an adverse certificate has issued if he fails to make the
18 request within one year of the mailing of notice specified in
19 part (2) above or if he fails to make the request within the
20 period for taking action after refusal of his application on the
21 basis of the adverse certificate.

22 **Sec. 93. Effect of Adverse Final Judgment or of Non**
23 **Action.**

24 (a) A final judgment under section 92 adverse to an
25 application from which no appeal or other review had been

1 or can be taken or had shall constitute cancellation of any
2 certifying on that application, and notice thereof shall be
3 endorsed on copies of the specifications of the protected plant
4 variety thereafter distributed by the Plant Variety Protection
5 Office.

6 (b) Any person who has not proceeded in accordance
7 with the provision of this chapter shall not be foreclosed or
8 in any way prejudiced with respect to the defense of an
9 infringement suit or affirmative relief under declaratory judg-
10 ment proceedings.

11 (c) No person subject to an adverse decision in a pro-
12 ceeding under this chapter shall be foreclosed with respect to
13 asserting comparable grounds in defense of an infringement
14 suit or as a basis for affirmative relief under declaratory judg-
15 ment proceedings.

16 **Sec. 94. Interfering Plant Variety Protection.**

17 The proprietor of a certificate of plant variety protection
18 may have relief against another proprietor of a certificate of
19 the same variety, or in case alternate owners are named, by
20 civil action, and the court may adjudge the question of
21 validity of the respective certificates, or the ownership of the

1 certificate. The provisions of section 73 (b) of this title shall
2 apply to actions brought under this section.

3 **TITLE III—PLANT VARIETY PROTECTION** 4 **AND RIGHTS**

Chapter	Section
10. Ownership and Assignment.....	101
11. Infringement of Plant Variety Protection.....	111
12. Remedies for Infringement of Plant Variety Protection, and Other Actions.....	121
13. Intent and Severability.....	131
14. Temporary Provision and Related Enactments.....	141

5 **Chapter 10.—OWNERSHIP AND ASSIGNMENT**

6 **Sec. 101. Ownership and Assignment.**

7 (a) Subject to the provisions of this title, plant variety
8 protection shall have the attributes of personal property.

9 (b) Applications for certificates of plant variety protec-
10 tion, or any interest in a variety, shall be assignable by an
11 instrument in writing. The proprietor may in like manner
12 grant and convey an exclusive right to use of the variety in
13 the whole or any specified part of the United States.

14 (c) A certificate of acknowledgment under the hand
15 and official seal of a person authorized to administer oaths
16 within the United States, or in a foreign country, of a diplo-
17 matic or consular officer of the United States or an officer

1 authorized to administer oaths whose authority is proved by
2 a certificate of a diplomatic or consular officer of the United
3 States, shall be prima facie evidence of the execution of an
4 assignment, grant or conveyance of plant variety protection
5 or application for plant variety protection.

6 (d). An assignment, grant, conveyance or license shall
7 be void as against any subsequent purchaser or mortgagee for
8 a valuable consideration, without notice, unless it, or an
9 acknowledgment by the assignor, and so forth, that there is
10 such encumbrance, is recorded in the Plant Variety Protec-
11 tion Office within one month from its date or one month prior
12 to the date of such subsequent purchase or mortgage.

13 **Sec. 102. Ownership During Testing.**

14 An owner who, with suitable notice, releases possession
15 of seed or other sexually reproducible plant material for
16 testing retains ownership with respect thereto; and any di-
17 version from authorized testing, or any unauthorized reten-
18 tion, of such material by anyone who has knowledge that
19 it is under such notice, or who is chargeable with notice, is
20 prohibited, and violates the property rights of the owner.
21 Anyone receiving the material tagged or labeled with the
22 notice is chargeable with the notice. The owner is entitled
23 to remedy and redress in a civil action hereunder. No remedy
24 available by state or local law is hereby excluded. No such
25 notice shall be used, or if used be effective, when the owner

1 has made identical sexually reproducible plant material
2 available to the public, as by sale thereof.

3 **Chapter 11.—INFRINGEMENT OF PLANT VARIETY**
4 **PROTECTION**

5 **Sec. 111. Infringement of Plant Variety Protection.**

6 Except as otherwise provided in this title, it shall be an
7 infringement of the rights of a proprietor of a novel variety
8 to perform without authority, any of the following acts in
9 the United States, or in commerce which can be regulated by
10 Congress or affecting such commerce, prior to expiration of
11 the right to plant variety protection but after either the issue
12 of the certificate or the distribution of a novel plant variety
13 with the notice under section 127:

14 (1) sell the novel variety, or offer it or expose it for
15 sale, deliver it, ship it, consign it, exchange it, or solicit
16 an offer to buy it, or any other transfer of title or pos-
17 session of it; except as otherwise provided herein;

18 (2) import the novel variety into, or export it from,
19 the United States;

20 (3) multiply the novel variety as a step in market-
21 ing (for growing purposes) the variety; or

22 (4) use the novel variety in producing (as dis-
23 tinguished from developing) a hybrid or different va-
24 riety therefrom; or

25 (5) use seed which had been marked "propaga-

tion prohibited" or progeny thereof to propagate the novel variety; or

(6) dispense the novel variety to another, in a form which can be propagated, without notice as to being a protected variety under which it was received; or

(7) perform any of the foregoing acts even in instances in which the novel variety is multiplied other than sexually; or

(8) instigate or actively induce performance of any of the foregoing acts.

Sec. 112. Right To Save Seed.

Except under subsections (3) and (4) of section 111, it shall not infringe any right hereunder for a person to save seed and grow the resulting variety for his own use.

Sec. 113. Private Defense Against Delayed Application.

No plant variety protection under this Act shall abridge the rights of any person who had developed a variety or his successor in business to produce, reproduce or sell his own variety, beginning more than one year prior to the effective filing date of an adverse application for a certificate of plant variety protection.

Sec. 114. Crop Exemption.

It shall not be an infringement to sell seed grown from the protected variety, obtained (for growing) by authority of the proprietor or by saving seed under section 112, for use

37

1 as food, feed, in manufacture or the like, if the sale is bona
2 fide for that purpose, and is in channels which are usual for
3 that purpose and in a manner exclusively for that purpose. A
4 purchaser who diverts such seed from those channels to grow-
5 ing purposes shall not be entitled to any benefit for lack of
6 notice under section 127.

7 **Sec. 115. Research Exemption.**

8 The use and reproduction of a protected variety for plant
9 breeding or other bona fide research shall not constitute an
10 infringement of the protection provided under this Act.

11 **Sec. 116. Intermediary Exemption.**

12 It shall not be an infringement to deliver, ship, consign
13 or other acts of transport or change of possession when per-
14 formed by a mere carrier or other innocent intermediaries, or
15 to offer for sale by an innocent advertising medium.

16 **Chapter 12.—REMEDIES FOR INFRINGEMENT OF**
17 **PLANT VARIETY PROTECTION, AND OTHER**
18 **ACTIONS**

19 **Sec. 121. Remedy for Infringement of Plant Variety Pro-**
20 **tection.**

21 A proprietor shall have remedy by civil action for in-
22 fringement of his plant variety protection under section 111.
23 If a variety is sold under the name of a proprietor's variety as
24 shown in his certificate, there is a prima facie presumption
25 that it is the same variety.

1 **Sec. 122. Presumption of Validity; Defenses.**

2 (a) Certificates of plant variety protection shall be pre-
3 sumed valid. The burden of establishing invalidity of a plant
4 variety protection shall rest on the party asserting invalidity.

5 (b) The following shall be defenses in any action charg-
6 ing infringement and shall be pleaded: (1) Noninfringement,
7 absence of liability for infringement, or unenforceability; (2)
8 Invalidity of the plant variety protection in suit on any
9 ground specified in section 42 of this title as a condition for
10 protectability; (3) Invalidity of the plant variety protection
11 in suit for failure to comply with any requirement of section
12 52; (4) That the asserted infringement was performed un-
13 der an existing certificate adverse to that asserted and prior
14 to notice of the infringement; and (5) Any other fact or
15 act made a defense by this Act.

16 **Sec. 123. Injunction.**

17 The several courts having jurisdiction of cases under this
18 title may grant injunctions in accordance with the principles
19 of equity to prevent the violation of any right hereunder on
20 such terms as the court deems reasonable.

21 **Sec. 124. Damages.**

22 (a) Upon finding for the proprietor the court shall
23 award damages adequate to compensate for the infringement
24 but in no event less than a reasonable royalty for the use

1 made of the variety by the infringer, together with interest
2 and costs as fixed by the court.

3 (b) When the damages are not determined by the jury,
4 the court shall determine them. In either event the court may
5 increase the damages up to three times the amount deter-
6 mined.

7 (c) The court may receive expert testimony as an aid
8 to the determination of damages or of what royalty would
9 be reasonable under the circumstances.

10 (d) As to infringement prior to, or resulting from a
11 planting prior to, issuance of a certificate for the infringed
12 variety, a court finding the infringer to have established
13 innocent intentions, shall have discretion as to awarding
14 damages.

15 **Sec. 125. Attorney Fees.**

16 The court in exceptional cases may award reasonable
17 attorney fees to the prevailing party.

18 **Sec. 126. Time Limitation on Damages.**

19 (a) No recovery shall be had for any infringement
20 committed more than six years (or three years with knowl-
21 edge of the proprietor) prior to the filing of the complaint
22 or counterclaim for infringement in the action.

23 (b) In the case of claims against the United States
24 Government for unauthorized use of a protected variety, the

1 period before bringing suit, up to six years, between the date
2 of receipt of written claim for compensation by the depart-
3 ment or agency of the Government having authority to settle
4 such claim, and the date of mailing by the Government of a
5 notice to the claimant that his claim has been denied shall
6 not be counted as part of the period referred to in the pre-
7 ceding paragraph.

8 **Sec. 127. Limitation of Damages; Marking and Notice.**

9 Proprietors may give notice to the public by physically
10 associating with or affixing to the container of seed of a novel
11 variety or by fixing to the novel variety, a label containing
12 the words "Propagation Prohibited" and after the certificate
13 issues, such additional words as "U.S. Protected Variety."
14 In the event the novel variety is distributed by authorization
15 of the proprietor and is received by the infringer without
16 such marking, no damages shall be recovered against such
17 infringer by the proprietor in any action for infringement,
18 except on proof that the infringer was notified of the in-
19 fringement and continued to infringe thereafter, in which
20 event damages may be recovered only for infringement oc-
21 curring after such notice. As to both damages and injunc-
22 tion, a court shall have discretion to be lenient as to disposal
23 of materials acquired in good faith by acts prior to such
24 notice.

1 **Sec. 128. False Marking.**

2 (a) Each of the following acts, if performed in connec-
3 tion with the sale, offering for sale, or advertising of sexually
4 reproducible plant material, is prohibited, and the Commis-
5 sioner may, if he determines after an opportunity for hear-
6 ing that the act is being so performed, issue an order to
7 cease and desist, said order being binding unless appealed
8 under the Federal Rules of Appellate Procedure:

9 (1) Use of the words "U.S. Protected Variety"
10 or any word or number importing that the material is
11 a variety protected under certificate, when it is not.

12 (2) Use of any wording importing that the ma-
13 terial is a variety for which an application for plant
14 variety protection is pending, when it is not.

15 (3) Use of the phrase "propagation prohibited" or
16 similar phrase without reasonable basis, a statement of
17 this basis being promptly filed with the Commissioner if
18 the phrase is used beyond experimental testing and no
19 application has been filed. Any reasonable basis expires
20 one year after commencement of use of the phrase be-
21 yond experimental testing except as justified thereafter
22 by a pending application or a certificate still in force.

23 (b) Anyone convicted of violating a binding cease and
24 desist order, or of performing any act prohibited in sub-

1 section (a) of this section for the purpose of deceiving the
2 public, shall be fined not more than \$10,000 and not less
3 than \$500.

4 (c) Anyone whose business is damaged or is likely to
5 be damaged by an act prohibited in subsection (a) of this
6 section, or is subjected to competition in connection with
7 which such act is performed, may have remedy by civil
8 action.

9 **Sec. 129. Nonresident Proprietors; Service and Notice.**

10 Every proprietor not residing in the United States may
11 file in the Plant Variety Protection Office a written designa-
12 tion stating the name and address of a person residing
13 within the United States on whom may be served process
14 or notice of proceedings affecting the plant variety protec-
15 tion or rights thereunder. If the person designated cannot
16 be found at the address given in the last designation, or if
17 no person has been designated, the United States District
18 Court for the District of Columbia shall have jurisdiction
19 and summons shall be served by publication or otherwise as
20 the court directs. The court shall have the same jurisdiction
21 to take any action respecting the plant variety protection, or
22 rights thereunder that it would have if the proprietor were
23 personally within the jurisdiction of the court.

1 **Chapter 13.—INTENT AND SEVERABILITY**

2 **Sec. 131. Intent.**

3 It is the intent of Congress to provide the indicated
4 protection for new varieties by exercise of any constitutional
5 power needed for that end, so as to afford adequate encour-
6 agement for research, and for marketing when appropriate,
7 to yield for the public the benefits of new varieties. Consti-
8 tutional clauses 3 and 8 of article I, section 8 are both relied
9 upon.

10 **Sec. 132. Severability.**

11 If this Act is held unconstitutional as to some provisions
12 or circumstances, it shall remain in force as to the remainder
13 or with necessary implied limitations as to other circum-
14 stances, except that in no event may a provision, because a
15 stated exemption from that provision is invalid, be effective
16 in the area of that exemption.

17 **Chapter 14.—TEMPORARY PROVISION AND RE-**
18 **LATED ENACTMENTS**

19 **Sec. 141. Effective Date.**

20 The foregoing Act shall take effect upon approval.
21 Applications may be filed with the Secretary and held by him
22 until the Office of Plant Variety Protection is organized and
23 in operation.

44

1 **Sec. 142. Amendment of Federal Seed Act.**

2 The Federal Seed Act (53 Stat. 1275) is amended as
3 follows:

4 (a) By adding at the end thereof:

5 **"TITLE V—SALE OF UNCERTIFIED SEED OF**
6 **PROTECTED VARIETY**

7 **"Section 501.**

8 (a) It shall be unlawful in the United States or in inter-
9 state or foreign commerce to sell by variety name seed not
10 certified by an official seed certifying agency when it is a
11 variety for which a certificate of plant variety protection
12 under the Plant Variety Protection Act specifies sale only
13 as a class of certified seed: *Provided*, That such seed may
14 be labeled as to variety name when used in a mixture by, or
15 with the approval of, the proprietor of the variety."

16 (b) By adding at the end of section 102 the following
17 wording: Seed shall be certified only when the basic seed
18 from which a variety was produced was furnished by the
19 originator of the variety, his successor in title, and, when
20 specified, conforms to the number of generations designated
21 by the originator.

22 **Sec. 143. Amendment of Judicial Code.**

23 Title 28 of the United States Code, entitled Judicial
24 Code and Judiciary, is amended as follows:

25 (a) After section 1544 add:

1 **Sec. 1545. Decision of the Plant Variety Protection Office.**

2 The Court of Customs and Patent Appeals shall have
3 nonexclusive jurisdiction to review by appeal decisions of
4 the Plant Variety Protection Office, provided that the deci-
5 sion appealed from is on appeal within the Plant Variety
6 Protection Office, if such appeal is permitted.

7 (b) In section 1338 after "Patents" in the hearing,
8 after "patents" and after "patent" (both occurrences) insert
9 ", plant variety protection."



PLANT VARIETY PROTECTION ACT

HEARING
BEFORE THE
SUBCOMMITTEE ON AGRICULTURAL RESEARCH
AND GENERAL LEGISLATION
OF THE
COMMITTEE ON
AGRICULTURE AND FORESTRY
UNITED STATES SENATE
NINETY-FIRST CONGRESS
SECOND SESSION

ON
S. 3070

A BILL TO ENCOURAGE THE DEVELOPMENT OF NOVEL VARIETIES OF SEXUALLY REPRODUCED PLANTS AND TO MAKE THEM AVAILABLE TO THE PUBLIC, PROVIDING PROTECTION AVAILABLE TO THOSE WHO BREED, DEVELOP, OR DISCOVER THEM, AND THEREBY PROMOTING PROGRESS IN AGRICULTURE IN THE PUBLIC INTEREST

JUNE 11, 1970

Printed for the use of the Committee on Agriculture and Forestry



U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1970

COMMITTEE ON AGRICULTURE AND FORESTRY

ALLEN J. ELLENDER, Louisiana, *Chairman*

SPESSARD L. HOLLAND, Florida

JAMES O. EASTLAND, Mississippi

HERMAN E. TALMADGE, Georgia

B. EVERETT JORDAN, North Carolina

GEORGE McGOVERN, South Dakota

JAMES B. ALLEN, Alabama

GEORGE D. AIKEN, Vermont

MILTON R. YOUNG, North Dakota

JACK MILLER, Iowa

CARL T. CURTIS, Nebraska

ROBERT J. DOLE, Kansas

HENRY BELLMON, Oklahoma

COTTS M. MOUSER, *Chief Clerk*

SUBCOMMITTEE ON AGRICULTURAL RESEARCH AND GENERAL LEGISLATION

B. EVERETT JORDAN, North Carolina, *Chairman*

JAMES O. EASTLAND, Mississippi

HERMAN E. TALMADGE, Georgia

JAMES B. ALLEN, Alabama

MILTON R. YOUNG, North Dakota

CARL T. CURTIS, Nebraska

ROBERT J. DOLE, Kansas

(II)

CONTENTS

Statement of:

Babcock, George B., manager, Grower Seed Association, Lubbock, Tex.....	Page 71
Blum, John C., Deputy Administrator, Regulatory Programs, Consumer and Marketing Service, U.S. Department of Agriculture....	50
Evans, E. Hervey, Jr., president, McNair Seed Company, Laurinburg, N.C.....	90
Ewing, Early C., Jr., vice president, Delta & Pine Land Co., Scott, Miss.....	85
Felgenhauer, Jack R., president, Washington Association of Wheat Growers, Ritzville, Wash.....	87
Fortmann, Dr. Henry R., chairman, Seed Policy Subcommittee, State Experiment Stations Committee on Organization and Policy, University Park, Pa.....	81
House, Thomas B., president, American Frozen Food Institute.....	89
Loden, Dr. Harold D., director of research, ACCO Seed, Division of Anderson, Clayton & Co., Belmond, Iowa.....	69
McKenna, Richard W., senior vice president, Ferry-Morse Seed Co., Mount View, Calif.....	67
McLain, Marvin L., legislative director, American Farm Bureau Federation.....	84
McLaughlin, Foil W., director in charge, North Carolina Crop Improvement Association, Raleigh, N.C.....	87
Miller, Hon. Jack, a U.S. Senator from the State of Iowa.....	47
Neely, Dr. J. W., vice president, Coker's Pedigreed Seed Co., Harts-ville, S.C.....	73
Reeve, Dr. Eldrow, vice president, vegetable research, Campbell Institute for Agricultural Research, Campbell Soup Co., Camden, N.J.....	83
Renner, Victor A., consultant, O. M. Scott & Sons Co., Marysville, Ohio.....	74
Rogers, John S., secretary-treasurer, National Council of Commercial Plant Breeders, Orange, Conn.....	65
Scott, Walter O., member, executive committee, Association of Official Seed Certifying Agencies, Urbana, Ill.....	76
Smith, J. Ritchie, assistant director of research, National Cotton Council of America, Memphis, Tenn.....	77
Stark, Paul C., senior vice president, Stark Bros. Nurseries and Or-chards Co., Louisiana, Mo.....	79
Strayer, Geo. M., secretary, Associated Hybrid Producers Cooperative Service, Hudson, Iowa.....	86
Sutherland, John I., executive vice president, American Seed Trade Association.....	64
Walker, George Rea, president, Stoneville, Pedigreed Seed Co., Stone-ville, Miss.....	75
Weiss, Martin G., Assistant to Deputy Administrator for Farm Re-search, Agricultural Research Service, U.S. Department of Agri-ture.....	50
White, Allenby L., chairman, Breeders' Rights Study Committee, American Seed Trade Association, Minneapolis, Minn.....	52

Miscellaneous documents:

S. 3070, 91st Congress.....	2
Department report on S. 3070.....	47
Countries ratifying the Convention of Paris for the Protection of New Varieties of Plants.....	52

PLANT VARIETY PROTECTION ACT

THURSDAY, JUNE 11, 1970

U.S. SENATE,
SUBCOMMITTEE ON AGRICULTURAL RESEARCH,
AND GENERAL LEGISLATION OF THE
COMMITTEE ON AGRICULTURE AND FORESTRY,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:40 a.m., in room 324, Old Senate Office Building, Senator B. Everett Jordan of North Carolina, chairman, presiding.

Present: Senator Jordan of North Carolina (presiding).

Also present: Senator Jack Miller of Iowa.

Senator JORDAN. The subcommittee is holding hearings today on S. 3070, the so-called Plant Variety Protection Act. The bill provides for the issuance of certificates of plant variety protection assuring the developers of novel varieties of sexually reproduced plants of exclusive rights to sell, reproduce, import, or export such varieties, or use them in the production of hybrids or different varieties, for a period of 17 years. Patents for asexually produced varieties are now provided for by 35 United States Code, 161-164.

Proponents of this legislation advise that it is needed to provide an incentive to plant breeders to develop new and improved varieties for the benefit of farmers, consumers, and industries concerned with the production, processing, and marketing of agricultural commodities.

Copies of the bill and the report of the Department of Agriculture will be inserted in the record at this point.

The Department states that it supports the objective of the bill but reserves further comment pending completion of an administration study of the laws protecting proprietary rights in the United States.

(S. 3070 and the report of the Department of Agriculture follow:)

(1)

91ST CONGRESS
1ST SESSION

S. 3070

IN THE SENATE OF THE UNITED STATES

OCTOBER 23, 1969

Mr. MILLER (for himself, Mr. DOLE, Mr. EASTLAND, Mr. HOLLINGS, Mr. JORDAN of North Carolina, and Mr. YOUNG of North Dakota) introduced the following bill; which was read twice and referred to the Committee on Agriculture and Forestry

A BILL

To encourage the development of novel varieties of sexually reproduced plants and to make them available to the public, providing protection available to those who breed, develop, or discover them, and thereby promoting progress in agriculture in the public interest.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

II

INDEX

	Section
TITLE I —Plant Variety Protection Office.....	1
TITLE II —Protectability of Plant Varieties and Certificates of Protection	41
TITLE III—Plant Variety Protection and Rights.....	101

TITLE I—PLANT VARIETY PROTECTION

OFFICE

Chapter	Section
1. Organization and Publications.....	1
2. Legal Provisions as to the Plant Variety Protection Office.....	21
3. Plant Variety Protection Fees.....	31

Chapter 1.—ORGANIZATION AND PUBLICATIONS

Section 1. Establishment.

There is hereby established in the Department of Agriculture a bureau to be known as the Plant Variety Protection Office, which shall have the functions set forth in this Act.

Sec. 2. Seal.

The Plant Variety Protection Office shall have a seal with which documents and certificates evidencing plant variety protection shall be authenticated.

Sec. 3. Officers and Employees.

(a) There shall be in the Plant Variety Protection Office a Commissioner of Plant Variety Protection, one Assistant Commissioner, and an appropriate staff. The Assistant Commissioner shall perform the duties pertaining to the office of Commissioner assigned to him by the Commissioner and shall fill the office of Commissioner during a vacancy in that office or in the absence of the Commissioner. The Com-

1 missioner of Plant Variety Protection shall be appointed by
2 the Secretary.

3 (b) The Secretary is authorized to fix the per annum
4 rate of basic compensation of each staff member in the Plant
5 Variety Protection Office at not in excess of the maximum
6 scheduled rate provided for positions in level V of section
7 5316 of title 5, United States Code.

8 **Sec. 4. Restrictions on Employees as to Interest in Plant**
9 **Variety Protection.**

10 Employees of the Plant Variety Protection Office, in-
11 cluding the Commissioner and Assistant Commissioner, shall
12 be ineligible during the periods of their employment, to apply
13 for plant variety protection and to acquire directly or in-
14 directly, except by inheritance or bequest, any right or
15 interest in any matters before that office. This section shall
16 not apply to members of the Plant Variety Protection Board
17 who are not otherwise employees of the Plant Variety
18 Protection Office.

19 **Sec. 5. Bond of Commissioner and Employees.**

20 The Commissioner and such other employees as he des-
21 ignates, before entering upon their duties, shall severally give
22 bond, with sureties, the former in the sum of \$10,000, and
23 the latter in sums prescribed by the Commissioner, condi-
24 tioned for the faithful discharge of their respective duties and
25 that they shall render to the proper officers of the Treasury

1 a true account of all money received by virtue of their
2 offices.

3 **Sec. 6. Duties of Commissioner, Regulations.**

4 The Commissioner, who shall report directly to the Sec-
5 retary, shall superintend or perform all duties required here-
6 under, and he shall have charge of property belonging to
7 the Plant Variety Protection Office. He may establish regula-
8 tions, not inconsistent with law, for the conduct of proceed-
9 ings in the Plant Variety Protection Office after consultations
10 with the Plant Variety Protection Board. All regulations
11 issued pursuant to this title shall be subject to the approval of
12 the Secretary.

13 **Sec. 7. Plant Variety Protection Board.**

14 (a) APPOINTMENT.—The Secretary shall appoint a
15 Plant Variety Protection Board. The Board shall consist
16 of individuals who, as a group, are expert in various areas of
17 varietal development covered by this Act. Membership of
18 the Board shall be drawn approximately equally from the
19 private or seed industry sector and from the sector of govern-
20 ment or the public. The Commissioner or his designee shall
21 act as chairman of the Board without voting rights except
22 in the case of ties.

23 (b) FUNCTIONS OF BOARD.—The functions of the Plant
24 Variety Protection Board shall include:

25 (1) Advising the Commissioner concerning the

1 adoption of Rules and Regulations to facilitate the proper
2 administration of this Act;

3 (2) Making advisory decisions on all appeals from
4 the Examiner. The Board shall determine whether to
5 act as a full Board or by panels it selects; and whether
6 to review advisory decisions made by a panel. For serv-
7 ice on such appeals, the Board may select, as temporary
8 members, experts in the area to which the particular
9 appeal relates; and

10 (3) Advising the Secretary on all questions under
11 section 44.

12 (c) COMPENSATION OF BOARD.—The members of the
13 Plant Variety Protection Board shall serve without compen-
14 sation except for standard government reimbursable expenses.

15 **Sec. 8. Library.**

16 The Commissioner shall maintain a library of scientific
17 and other works and periodicals, both foreign and domestic,
18 in the Plant Variety Protection Office to aid the officers in
19 the discharge of their duties.

20 **Sec. 9. Register of Protected Plant Varieties.**

21 The Commissioner shall maintain a register of published
22 specifications of United States protected plant varieties and
23 a file of such other scientific and technical information as may
24 be necessary or practicable.

1 **Sec. 10. Publications.**

2 (a) The Commissioner may publish, or cause to be pub-
3 lished, in such format as he shall determine to be suitable, the
4 following:

5 (1) The specifications for plant variety protection
6 including drawings and photographs.

7 (2) The Official Journal of the Plant Variety Pro-
8 tection Office, including annual indices.

9 (3) Pamphlet copies of the plant variety protection
10 laws and rules of practice and circulars or other publica-
11 tions relating to the business of the Office.

12 (b) The Plant Variety Protection Office may print the
13 heading of the drawings or photographs for protected plant
14 varieties for the purpose of photolithography and any lithog-
15 raphy to appear on the same page.

16 (c) The Commissioner may (1) establish public facili-
17 ties for the searching of plant variety protection records and
18 materials, and (2) from time to time, as through an informa-
19 tion service, disseminate to the public those portions of the
20 technological and other public information available to or
21 within the Plant Variety Protection Office to encourage inno-
22 vation and promote the progress of the useful arts.

23 (d) The Commissioner may exchange any of the pub-
24 lications specified for publications desirable for the use of the

1 Plant Variety Protection Office. The Commissioner may
2 exchange copies of specifications, drawings, and photographs
3 of United States protected plant varieties for copies of speci-
4 fications, drawings, and photographs of applications and pro-
5 tected plant varieties of foreign countries.

6 **Sec. 11. Copies for Public Libraries.**

7 The Commissioner may supply printed copies of speci-
8 fications, drawings, and photographs of protected plant varie-
9 ties to public libraries in the United States which shall main-
10 tain such copies for the use of the public.

11 **Chapter 2.—LEGAL PROVISIONS AS TO THE PLANT**
12 **VARIETY PROTECTION OFFICE**

13 **Sec. 21. Day for Taking Action Falling on Saturday, Sun-**
14 **day, or Holiday.**

15 When the day, or the last day, for taking any action or
16 paying any fee in the United States Plant Variety Protection
17 Office falls on Saturday, Sunday, a holiday within the District
18 of Columbia, or on any other day the Plant Variety Protec-
19 tion Office is closed for the receipt of papers, the action may
20 be taken or the fee paid, on the next succeeding business day.

21 **Sec. 22. Form of Papers Filed.**

22 The Commissioner may by regulations prescribe the form
23 of papers to be filed in the Plant Variety Protection Office.

1 Sec. 23. Testimony in Plant Variety Protection Office
2 Cases.

3 The Commissioner may establish regulations for taking
4 affidavits, depositions, and other evidence required in cases
5 before the Plant Variety Protection Office. Any officer author-
6 ized by law to take depositions to be used in the courts of the
7 United States, or of the State where he resides, may take such
8 affidavits and depositions, and swear the witnesses. If any
9 person acts as a hearing officer by authority of the Commis-
10 sioner, he shall have like power.

11 Sec. 24. Subpoenas, Witnesses.

12 (a) The clerk of any United States court for the district
13 wherein testimony is to be taken in accordance with regula-
14 tions established by the Commissioner for use in any con-
15 tested case in the Plant Variety Protection Office shall, upon
16 the application of any party thereof, issue a subpoena for any
17 witness residing or being within such district or within one
18 hundred miles of the stated place in such district, command-
19 ing him to appear and testify before an officer in such
20 district authorized to take depositions and affidavits, at the
21 time and place stated in the subpoena. The provisions of the
22 Federal Rules of Civil Procedure relating to the attendance
23 of witnesses and the production of documents and things shall
24 apply to contested cases in the Plant Variety Protection
25 Office insofar as consistent with such regulations.

1 (b) Every witness subpoenaed or in attendance shall be
2 allowed the fees and traveling expenses allowed to witnesses
3 attending the United States district courts.

4 (c) A judge of a court whose clerk issued a subpoena
5 may enforce obedience to the process or punish disobedience
6 as in other like cases, on proof that a witness, served with
7 such subpoena, neglected or refused to appear or to testify.
8 No witness shall be deemed guilty of contempt for disobeying
9 such subpoena unless his fees and traveling expenses in going
10 to, and returning from, one day's attendance at the place
11 of examination, are paid or tendered him at the time of the
12 service of the subpoena; nor for refusing to disclose any
13 secret matter except upon appropriate order of the court
14 which issued the subpoena.

15 **Sec. 25. Effect of Defective Execution.**

16 Any document to be filed in the Plant Variety Protec-
17 tion Office and which is required by any law or regulation to
18 be executed in a specified manner may be provisionally ac-
19 cepted by the Commissioner despite a defective execution,
20 provided a properly executed document is submitted within
21 such time as may be prescribed.

22 **Sec. 26. Regulations for Practice Before the Office.**

23 The Commissioner, subject to the approval of the Secre-
24 tary, may prescribe regulations governing the recognition

1 and conduct of persons representing applicants or other parties
2 ties before the Plant Variety Protection Office. The Commissioner
3 may, after notice and opportunity for a hearing suspend or
4 exclude, either generally or in any particular case, from further
5 practice before the Office of Plant Variety Protection any person
6 shown to be incompetent or disreputable or guilty of gross
7 misconduct.

8 **Sec. 27. Unauthorized Practice.**

9 Anyone who engages in direct or indirect practice before
10 the Office of Plant Variety Protection while suspended or
11 excluded under section 26, or without being either authorized
12 to practice law where he maintains his office, or authorized
13 by the Commissioner on the basis of having established his
14 ability and character, shall be liable in a civil action for the
15 return of all money received, and for compensation for
16 damage done by such person and also may be enjoined from
17 such practice. However there shall be no liability for damage
18 if such person establishes that the work was done competently
19 and without negligence. This section does not apply to any-
20 one who, without a claim of self-sufficiency, works under
21 the supervision of another, who is thus authorized and is
22 the responsible party; nor to anyone who establishes that
23 he acted only on behalf of any employer by whom he was
24 regularly employed.

1 **Chapter 3.—PLANT VARIETY PROTECTION FEES**

2 **Sec. 31. Plant Variety Protection Fees.**

3 (a) The Commissioner shall charge the following fees:

4 (1) On filing each application for a certificate of
5 plant variety protection, \$50.

6 (2) For issuing each certificate of plant variety
7 protection, \$50 unless the drawing or photograph to be
8 reproduced is in color and in that event, \$75.

9 (3) On appeal under section 63 of this title, for
10 the first time from the examiner to the Plant Variety
11 Protection Board, \$50. In addition, when consideration
12 by the Plant Variety Protection Board is reached, \$50.

13 (4) For certificate under section 85 or under sec-
14 tion 86 of this title, \$15.

15 (5) As available: For uncertified copies of specifi-
16 cation, drawing, and photographs which have been pub-
17 lished, such fees and charges as the Commissioner may
18 establish.

19 (6) For recording every assignment, agreement,
20 or other paper relating to the property in a plant variety
21 protection application, \$10: where the document re-
22 lates to more than one plant variety protection applica-
23 tion, \$1 for each additional item.

(7) For each certificate certifying copies of records,
\$1.

(8) For delayed payment or other action when
permitted upon payment of special fee, \$10.

(b) The Commissioner may reduce any fees under this
section found to be in excess of direct costs.

(c) The Commissioner may establish charges for copies
of records, publications, or services furnished by the Plant
Variety Protection Office, not specified above.

Sec. 32. Payment of Plant Variety Protection Fees; Re- turn of Excess Amounts.

All fees shall be paid to the Commissioner, who shall
deposit the same in the Treasury of the United States in
such manner as the Secretary of the Treasury directs, and
the Commissioner may refund any sum paid by mistake
or in excess of the fee required.

TITLE II—PROTECTABILITY OF PLANT VARIETIES AND CERTIFICATES OF PRO- TECTION

Chapter	Section
4. Protectability of Plant Varieties.....	41
5. Applications: Form, Who May File, Relating Back, Confiden- tiality	51
6. Examination: Response Time, Initial Appeals.....	61
7. Appeals to Courts and Other Review.....	71
8. Certificates of Plant Variety Protection.....	81
9. Reexamination after Issue, and Contested Proceedings.....	91

**Chapter 4.—PROTECTABILITY OF PLANT
VARIETIES**

Sec. 41. Definitions and Rules of Construction.

The definitions and rules of construction set forth in this section apply for the purposes of this title.

(a) The term “novel variety” may be represented by, without limitation, seed, transplants, clones, and plants, and is satisfied if there is:

(1) Distinctness in the sense that the variety clearly differs by one or more identifiable morphological, physiological or other characteristics, as to which a difference in genealogy may contribute evidence, from all prior varieties of public knowledge at the date of determination within the provisions of section 42; and

(2) Uniformity in the sense that any variations are describable, predictable and commercially acceptable; and

(3) Stability in the sense that the variety may be sexually reproduced with its distinctive characteristics, with a reasonable degree of reliability, or to a degree comparable to that of other varieties of the same kind.

(b) The terms “United States” and “this country”

1 mean the United States of America, its territories and posses-
2 sions, and the Commonwealth of Puerto Rico.

3 (e) The term "effective filing date," includes the filing
4 date to which an application for plant variety protection is
5 entitled under the provisions of section 55 of this title.

6 (d) The term "effective filing date actually in the United
7 States," means the earliest filing date to which an application
8 for plant variety protection is entitled under the provisions of
9 section 55 (b) of this title, excluding section 55 (a) .

10 (c) The term "kind" means one or more related species
11 or subspecies singly or collectively known by one common
12 name, for example, soybean, flax, carrot, or radish.

13 (f) The term "date of determination" means the date
14 when there has been at least tentative determination that the
15 variety has been sexually reproduced with recognized char-
16 acteristics making it a novel variety, whether or not the
17 novelty thereof has been determined.

18 (g) The terms "breeder" and "discoverer" shall each
19 include the other as shall the terms "breed," "develop" and
20 "discover". The breeders or discoverers are those who direct
21 the final breeding, creating the novel variety or discover the
22 novel variety and, in either case, direct the determination
23 required by subsection (f) .

24 (h) The term "sexually reproduced" shall include re-

1 peated sexual production through the reproduction system
2 designated by the breeder.

3 (i) The term "proprietor" when distinguished from
4 "breeder" means the employer when the breeder's work was
5 done for hire without contrary agreement, or other owner
6 by assignment or operation of law; but otherwise may in-
7 clude the applicant until his position is taken by his successor
8 in title, after which, the term "applicant" may mean
9 proprietor.

10 (j) The term "basic seed" means the seed planted to
11 produce certified or commercial seed.

12 (k) The term "testing" includes the period during
13 which there is testing of seed or other sexually reproducible
14 plant material, before any sale thereof, even though such
15 material may be given out, provided the purpose is for ex-
16 perimental testing on behalf of the proprietor, with observa-
17 tion by or reported to the proprietor (even though the crop
18 is used or sold for other than seed).

19 (l) The term "public variety" means a variety in this
20 country which is known or used, other than by the breeders
21 and their associates, or on sale; if other than secretly or for
22 the purpose of experimenting or testing; or as individual
23 plants not known to be either sexually self-reproducible or
24 repeatedly producible sexually at will.

(m) A variety described in a publication as specified in section 42 (a) is "effectively available to workers in this country" if a source from which it can be purchased is indicated in a publication or readily determinable or if the publication teaches how to produce the variety from source-material available to workers in this country.

Sec. 42. Right to Plant Variety Protection; Plant Varieties Protectable.

Whoever is the breeder or the discoverer of any novel variety of sexually reproduced plants, except as excluded in section 45, or his successor in title, shall be entitled to plant variety protection therefor, subject to the conditions and requirements of this title unless one of the following bars exists:

(1) Before the date of determination thereof by the breeder, or more than one year before the effective filing date of the application therefor, the variety was (A) a public variety in this country, or (B) effectively available to workers in this country and adequately described by a publication reasonably deemed a part of the public technical knowledge in this country which description must include a disclosure of the principal characteristics by which the variety is distinguished.

(2) The variety, though not in use or on sale in this country, was in use or on sale elsewhere, other than secretly or for the purpose of experimenting or testing,

1 by or in the knowledge of the applicant or his predeces-
2 sor in title, or their agents or representatives, more than
3 one year before the effective date of the application there-
4 for.

5 (3) An application for protection of the variety
6 based on the same breeders acts, was filed in a foreign
7 country by the proprietor or his privies more than one
8 year before the effective filing date actually in the United
9 States.

10 (4) Another is entitled to an earlier date of de-
11 termination for the variety: *Provided, however,* That the
12 benefit of a date of determination can be lost by not con-
13 tinuing a program of development and testing to com-
14 mercialization.

15 **Sec. 43. Reciprocity Limits.**

16 Protection under the Act shall be limited to proprietors
17 who are nationals of the United States, except where this lim-
18 itation would violate a treaty and except that proprietors
19 who are nationals of a foreign state in which they are dom-
20 icated shall be entitled to so much of the protection here
21 afforded as is afforded by said foreign state to nationals of the
22 United States for the same genus and species.

23 **Sec. 44. Public Interest In Wide Usage.**

24 The Secretary may declare a protected variety open to

1 use on a basis of equitable remuneration to the proprietor,
 2 not less than a reasonable royalty, when he determines that
 3 such declaration is necessary in order to insure an adequate
 4 supply of fiber, food or feed in this country and that the
 5 proprietor is not supplying the public needs at a price which
 6 may reasonably be deemed fair. Such declaration may be,
 7 with or without limitation, with or without designation of
 8 what the remuneration is to be; and shall be subject to re-
 9 view as under section 71 or 72 (any finding that the price
 10 is not reasonable being reviewable), and shall remain in
 11 effect not more than two years. In the event litigation is
 12 required to collect such remuneration, a higher rate may be
 13 allowed by the court.

14 **Sec. 45. Exclusions From Eligibility for Protection.**

15 Protection under this Act shall not be available for:

16 (a) Fungi and Bacteria,

17 (b) Hybrids.

18 **Chapter 5.—APPLICATIONS: FORM, WHO MAY FILE,** 19 **RELATING BACK, CONFIDENTIALITY**

20 **Sec. 51. Application for Recognition of Plant Variety** 21 **Rights.**

22 (a) An application for a certificate of Plant Variety
 23 Protection may be filed by either the breeder or the pro-
 24 prietor of the variety sought to be protected. The applica-
 25 tion shall be made in writing to the Commissioner, shall be

1 signed by or on behalf of the applicant, and shall be accom-
2 panied by the prescribed fee. An application filed by a per-
3 son not the breeder shall state the basis on which it is filed.

4 (b) An error as to the naming of the breeder, without
5 deceptive intent, may be corrected at any time, in accordance
6 with regulation established by the Commissioner.

7 **Sec. 52. Content of Application.**

8 An application for a certificate recognizing plant variety
9 rights shall contain:

10 (1) The name of the variety except that a tempo-
11 rary designation will suffice until the certificate is to be
12 issued.

13 (2) A description of the variety setting forth its
14 novelty and a description of the genealogy and breeding
15 procedure, when known. The Commissioner may require
16 amplification, including the submission of adequate
17 photographs or drawings or plant specimens, if the
18 description is not adequate or as complete as is reason-
19 ably possible, and submission of records or proof of
20 proprietorship or of allegations made in the application.

21 A proprietor may add to or correct the description at
22 any time, before the certificate is issued, upon a showing
23 acceptable to the Commissioner that the revised descrip-
24 tion is retroactively accurate. Courts shall protect others
25 from any injustice which would result. The Commis-

1 sioner may accept records of the originator and of any
2 official seed certifying agency in this country as evidence
3 of stability where applicable.

4 (3) A declaration that a viable sample of basic seed
5 necessary for propagation of the variety will be deposited
6 and replenished periodically in a public repository in
7 accordance with regulations to be established hereunder.

8 This declaration may be added by amendment.

9 **Sec. 53. Joint Breeders.**

10 (a) When two or more persons are the breeders, one
11 (or his successor) may apply, naming the others.

12 (b) The Commissioner, after such notice as he may
13 prescribe, may issue a certificate of plant variety protection
14 to the applicant and such of the other breeders as may have
15 subsequently joined in the application.

16 **Sec. 54. Death or Incapacity of Breeder.**

17 Legal representatives of deceased breeders and of those
18 under legal incapacity may make application for plant vari-
19 ety protection upon compliance with the requirements and
20 on the same terms and conditions applicable to the breeder
21 or proprietor.

22 **Sec. 55. Benefit of Earlier Filing Date.**

23 (a) An application for plant variety protection for a
24 variety filed in this country by a person who has, or whose

1 predecessor or successor in title has, previously filed an
2 application for plant variety protection for the same variety
3 by the same breeder in a foreign country which affords simi-
4 lar privileges in the case of applications filed in the United
5 States or to citizens of the United States, shall have the same
6 effect as the same application would have if filed in the
7 United States on the date on which the application for plant
8 variety protection for the same variety was first filed in any
9 foreign country, if the application in this country is filed
10 within twelve months from the earliest date on which such
11 foreign application was filed. No application shall be entitled
12 to a right of priority under this section, unless the applicant
13 designates the foreign application in his application or by
14 amendment thereto and, if required by the Commissioner,
15 furnishes such copy, translation or both, as the Commissioner
16 may specify.

17 (b) An application for a certificate of plant variety pro-
18 tection for the same variety as was the subject of an applica-
19 tion previously filed in the United States by or on behalf
20 of the same proprietor, or by his predecessor in title, shall
21 have the same effect as to such variety as though filed on
22 the date of the prior application if filed before the issuance
23 of the certificate or termination of proceedings on the first
24 application or on an application similarly entitled to the
25 benefit of the filing date of the first application and if con-

1 tains or is amended to contain a specific reference to the
2 earlier filed application.

3 (c) A later application shall not by itself establish that
4 a characteristic newly described was in the variety at the
5 time of the earlier application.

6 **Sec. 56. Confidential Status of Application.**

7 Applications for plant variety protection and their con-
8 tents shall be kept in confidence by the Plant Variety Pro-
9 tection Office, by the Board, and by the offices in the De-
10 partment of Agriculture to which access may be given under
11 regulations. No information concerning the same shall be
12 given without the authority of the applicant or proprietor,
13 unless necessary under special circumstances as may be de-
14 termined by the Commissioner, except that the Commis-
15 sioner may publish the variety names designated in applica-
16 tions, stating the kind to which each applies.

17 **Sec. 57. Publication.**

18 The Commissioner may establish regulations for the
19 publication of pending applications at the request of the
20 proprietor.

21 **Chapter 6.—EXAMINATION, RESPONSE TIME, INI-** 22 **TIAL APPEALS**

23 **Sec. 61. Examination of Application.**

24 The Commissioner shall cause an examination to be
25 made of the application and if on such examination it is

1 determined that the applicant is entitled to plant variety
2 protection under the law, the Commissioner shall issue a
3 notice of allowance of plant variety protection therefor as
4 hereinafter provided.

5 **Sec. 62. Notice of Refusal; Reconsideration.**

6 (a) Whenever an application is refused, or any objection
7 or requirement made by the examiner, the Commissioner
8 shall notify the applicant thereof, stating the reasons therefor,
9 together with such information and references as may be
10 useful in judging the propriety of continuing the prosecution
11 of the application; and if after receiving such notice the
12 applicant requests reconsideration, with or without amend-
13 ment, the application shall be reconsidered.

14 (b) For taking appropriate action after a refusal, an
15 applicant shall be allowed six months, or such other time as
16 the Commissioner in exceptional circumstances shall set in the
17 refusal, or such time as he may allow as an extension. With-
18 out such extension, action may be taken up to three months
19 late by paying a delayed filing fee.

20 **Sec. 63. Initial Appeal.**

21 When an application for plant variety protection has been
22 refused by the examiner, the applicant may appeal from the
23 decision of the examiner to the Commissioner. The Commis-
24 sioner shall seek the advice of the Plant Variety Protection
25 Board on all appeals, before deciding the appeal.

Chapter 7.—APPEALS TO COURTS AND OTHER REVIEW

Sec. 71. Appeals.

From decisions made on appeal within the Plant Variety Protection Office, and also under the provisions of section 92, appeal may be taken under the Federal Rules of Appellate Procedure. The Court of Customs and Patent Appeals shall have jurisdiction, without limitation to that court.

Sec. 72. Civil Action Against Commissioner.

An applicant dissatisfied with a decision under section 63 or 91 of this title, may, as an alternative to appeal, have remedy by civil action against the Commissioner in the United States District Court for the District of Columbia. Such action shall be commenced within sixty days after such decision or within such further time as the Commissioner allows. The court may, in the case of review of a decision by the Commissioner refusing plant variety protection, adjudge that such applicant is entitled to receive a certificate of plant variety protection for his variety as specified in his application as the facts of the case may appear, on compliance with the requirements of this Act.

Sec. 73. Appeal or Civil Action in Contested Cases.

(a) A party to a proceeding under section 92 of this title, dissatisfied with the decision, may take an appeal under section 71 or may have remedy by civil action if commenced

1 within sixty days after such decision or within such further
2 time as the Commissioner allows. A party contemplating ap-
3 peal as provided herein shall notify any adverse party of his
4 intention and such adverse party, not the Commissioner, shall
5 have the right, by notice served within ten days of the notice
6 to him, to elect that any review shall be by civil action. In
7 such suits the record in the Plant Variety Protection Office
8 shall be admitted on motion of either party upon the terms
9 and conditions as to costs, expenses, and the further cross-
10 examination of witnesses, as the court imposes, without prej-
11 udice to the right of the parties to take further testimony.
12 The testimony and exhibits of the record in the Plant Variety
13 Protection Office when admitted shall have the same effect as
14 if originally taken and produced in the suit.

15 (b) Such suit may be instituted against the party in
16 interest as shown by the record of the Plant Variety Protec-
17 tion Office at the time of the decision complained of, but any
18 party in interest may become a party to the action. If there
19 be adverse parties residing in a plurality of districts not em-
20 braced within the same State, or an adverse party residing
21 in a foreign country, the United States District Court for the
22 District of Columbia, or any United States district court to
23 which it may transfer the case, shall have jurisdiction and
24 may issue summons against the adverse parties directed to
25 the marshal of any district in which any adverse party resides.

1 Summons against adverse parties residing in foreign countries
2 may be served by publication or otherwise as the court
3 directs. The Commissioner shall not be made a party but he
4 shall have the right to intervene. Judgment of the court in
5 favor of the right of an applicant to plant variety protection
6 shall authorize the Commissioner to issue a certificate of plant
7 variety protection on the filing in the Plant Variety Protec-
8 tion Office of a certified copy of the judgment and on com-
9 pliance with the requirements of this Act.

10 **Chapter 8.—CERTIFICATES OF PLANT VARIETY**
11 **PROTECTION**

12 **Sec. 81. Plant Variety Protection.**

13 (a) If it appears that the proprietor is entitled to plant
14 variety protection under the law, a written notice of allow-
15 ance shall be given or mailed to the proprietor. The notice
16 shall specify the sum, constituting the issue fee, which shall
17 be paid within one month thereafter.

18 (b) Upon timely payment of this sum, and provided
19 that deposit of seed has been made in accordance with sec-
20 tion 52 (c), the certificate of plant variety protection shall
21 issue.

22 (c) If any payment required by this section is not
23 timely made, but is submitted with the fee for delayed
24 payment within nine months after the due date, or within
25 such further time as the Commissioner may allow, it shall
26 be accepted.

1 **Sec. 82. How Issued.**

2 A certificate of plant variety protection shall be issued
3 in the name of the United States of America under the seal
4 of the Plant Variety Protection Office, and shall be signed
5 by the Commissioner or have his signature placed thereon,
6 and shall be recorded in the Plant Variety Protection Office.

7 **Sec. 83. Contents and Term of Plant Variety Protection.**

8 (a) Every certificate of plant variety protection shall
9 certify that the breeder or proprietor, his heirs or assignees,
10 has the right, during the term of the plant variety protection,
11 to exclude others from selling the variety, or offering it
12 for sale, or reproducing it, or importing it, or exporting it,
13 or using it in producing (as distinguished from developing)
14 a hybrid or different variety therefrom, to the extent pro-
15 vided by this Act. If the proprietor so elects, the certificate
16 shall also specify that in the United States seed of the variety
17 shall be sold by variety name only as a class of certified
18 seed and, if specified, shall also conform to the number of
19 generations designated by the proprietor. Any rights, or all
20 rights except those elected under the preceding sentence,
21 may be waived; and the certificate shall conform to such
22 waiver. The Commissioner may at his discretion permit such
23 election or waiver to be made after certificating and amend
24 the certificate accordingly, without retroactive effect.

25 (b) The term of plant variety protection shall expire

1 seventeen years from the date of issue of the certificate in
 2 the United States. If the certificate is not issued within
 3 three years from the effective filing date, the Commissioner
 4 may shorten the term by the amount of time attributed to
 5 the applicant.

6 (c) The term of Plant Variety Protection shall also ex-
 7 pire if a proprietor fails to comply with regulations, in force
 8 at the time of certifying, relating to replenishing seed in
 9 a public repository: *Provided, however,* That this expira-
 10 tion shall not occur unless notice is mailed to the proprietor
 11 and he fails, within the time allowed thereafter, not less than
 12 three months, to comply with said regulations, paying the
 13 delayed fee in section 31 (a) (8).

14 **Sec. 84. Certificate of Correction of Plant Variety Protec-**
 15 **tion Office Mistake.**

16 Whenever a mistake in certifying a protected plant
 17 variety, incurred through the fault of the Plant Variety
 18 Protection Office, is clearly disclosed by the records of the
 19 Office, the Commissioner may issue a certificate of correc-
 20 tion stating the fact and nature of such mistake, under seal,
 21 without charge, to be recorded in the records of plant variety
 22 protection. A copy thereof shall be attached to each copy
 23 of the application of the plant variety protection and such
 24 certificate shall be considered as part of the original certifi-
 25 cate of plant variety protection. Every such certificate of

1 plant variety protection shall have the same effect and opera-
2 tion in law on the trial of action as if the same had been
3 originally issued in such corrected form. The Commissioner
4 may issue a corrected certificate of plant variety protection
5 without charge in lieu of and with like effect as a certificate
6 of correction.

7 **Sec. 85. Certificate of Correction of Applicant's Mistake.**

8 Whenever a mistake of a clerical or typographical na-
9 ture, or of minor character, or in the description of the
10 variety, which was not the fault of the Plant Variety Pro-
11 tection Office, appears in certificating a plant variety protec-
12 tion and a showing has been made that such mistake oc-
13 curred in good faith, the Commissioner may, upon payment
14 of the required fee, issue a certificate of correction, if the
15 correction unquestionably could have been made before the
16 certificate issued. Such certificate of plant variety protection
17 shall have the same effect and operation in law on the trial
18 of actions for causes thereafter arising as if the same had
19 been originally issued in such corrected form.

20 **Sec. 86. Correction of Named Breeder.**

21 An error as to the naming of a breeder in the applica-
22 tion, without deceptive intent, shall not affect validity of plant
23 variety protection and may be corrected at any time by the
24 Commissioner in accordance with regulations established by

1 him or upon order of a federal court before which the matter
 2 is called in question. Upon such correction the Commissioner
 3 shall issue a certificate accordingly. Such correction shall not
 4 deprive a breeder of any rights he otherwise would have had.

5 **Chapter 9.—REEXAMINATION AFTER ISSUE, AND**
 6 **CONTESTED PROCEEDINGS**

7 **Sec. 91. Reexamination After Issue.**

8 (a) Any person may, within five years after the issu-
 9 ance of a certificate of plant variety protection, notify the
 10 Commissioner in writing of facts which may have a bearing
 11 on the protectability of the variety, and the Commissioner
 12 may cause such plant variety protection to be reexamined
 13 in the light thereof.

14 (b) Reexamination of plant variety protection under
 15 this section and appeals shall be pursuant to the same pro-
 16 cedures and with the same rights as for original examina-
 17 tions. Abandonment of the procedure while subject to a rul-
 18 ing against the retention of the certificate shall result in can-
 19 cellation of the plant variety certificate thereon and notice
 20 thereof shall be endorsed on copies of the specification of the
 21 protected plant variety thereafter distributed by the Plant
 22 Variety Protection Office.

23 (c) If a person acting under subsection (a), within the
 24 time specified above, makes a prima facie showing of facts
 25 needing proof, the Commissioner may direct that the reexami-

1 nation include such interparty proceedings as he shall
2 establish.

3 **Sec. 92. Priority Contest.**

4 (a) If the Commissioner determines that two applica-
5 tions of different breeders or proprietors may be based on the
6 same variety, he may:

7 (1) Initiate a priority contest on his own motion
8 whether or not one of the applications may have been
9 certificated; or

10 (2) Issue a certificate on the application having the
11 earliest effective filing date, with notice to all; or

12 (3) Issue a certificate naming both proprietors as
13 alternative owners, under a single variety name accept-
14 able to both.

15 (b) On request of one proprietor when a certificate has
16 been issued naming another proprietor as an owner or alter-
17 native owner, both having applied for protection on the same
18 variety, the Commissioner shall institute a priority contest,
19 except that a proprietor shall have forfeited his right to assert
20 priority for the purpose of obtaining plant variety protection
21 when an adverse certificate has issued if he fails to make the
22 request within one year of the mailing of notice specified in
23 part (2) above or if he fails to make the request within the
24 period for taking action after refusal of his application on the
25 basis of the adverse certificate.

1 **Sec. 93. Effect of Adverse Final Judgment or of Non**
2 **Action.**

3 (a) A final judgment under section 92 adverse to an
4 application from which no appeal or other review had been
5 or can be taken or had shall constitute cancellation of any
6 certifying on that application, and notice thereof shall be
7 endorsed on copies of the specifications of the protected plant
8 variety thereafter distributed by the Plant Variety Protection
9 Office.

10 (b) Any person who has not proceeded in accordance
11 with the provision of this chapter shall not be foreclosed or
12 in any way prejudiced with respect to the defense of an
13 infringement suit or affirmative relief under declaratory judg-
14 ment proceedings.

15 (c) No person subject to an adverse decision in a pro-
16 ceeding under this chapter shall be foreclosed with respect to
17 asserting comparable grounds in defense of an infringement
18 suit or as a basis for affirmative relief under declaratory judg-
19 ment proceedings.

20 **Sec. 94. Interfering Plant Variety Protection.**

21 The proprietor of a certificate of plant variety protection
22 may have relief against another proprietor of a certificate of
23 the same variety, or in case alternate owners are named, by
24 civil action, and the court may adjudge the question of
25 validity of the respective certificates, or the ownership of the

- 1 certificate. The provisions of section 73 (b) of this title shall
 2 apply to actions brought under this section.

3 **TITLE III—PLANT VARIETY PROTECTION**
 4 **AND RIGHTS**

Chapter	Section
10. Ownership and Assignment.....	101
11. Infringement of Plant Variety Protection.....	111
12. Remedies for Infringement of Plant Variety Protection, and Other Actions.....	121
13. Intent and Severability.....	131
14. Temporary Provision and Related Enactments.....	141

5 **Chapter 10.—OWNERSHIP AND ASSIGNMENT**

6 **Sec. 101. Ownership and Assignment.**

- 7 (a) Subject to the provisions of this title, plant variety
 8 protection shall have the attributes of personal property.

- 9 (b) Applications for certificates of plant variety protec-
 10 tion, or any interest in a variety, shall be assignable by an
 11 instrument in writing. The proprietor may in like manner
 12 grant and convey an exclusive right to use of the variety in
 13 the whole or any specified part of the United States.

- 14 (c) A certificate of acknowledgment under the hand
 15 and official seal of a person authorized to administer oaths
 16 within the United States, or in a foreign country, of a diplo-
 17 matic or consular officer of the United States or an officer
 18 authorized to administer oaths whose authority is proved by
 19 a certificate of a diplomatic or consular officer of the United
 20 States, shall be prima facie evidence of the execution of an

1 assignment, grant or conveyance of plant variety protection
2 or application for plant variety protection.

3 (d) An assignment, grant, conveyance or license shall
4 be void as against any subsequent purchaser or mortgagee for
5 a valuable consideration, without notice, unless it, or an
6 acknowledgment by the assignor, and so forth, that there is
7 such encumbrance, is recorded in the Plant Variety Protec-
8 tion Office within one month from its date or one month prior
9 to the date of such subsequent purchase or mortgage.

10 **Sec. 102. Ownership During Testing.**

11 An owner who, with suitable notice, releases possession
12 of seed or other sexually reproducible plant material for
13 testing retains ownership with respect thereto; and any di-
14 version from authorized testing, or any unauthorized reten-
15 tion, of such material by anyone who has knowledge that
16 it is under such notice, or who is chargeable with notice, is
17 prohibited, and violates the property rights of the owner.
18 Anyone receiving the material tagged or labeled with the
19 notice is chargeable with the notice. The owner is entitled
20 to remedy and redress in a civil action hereunder. No remedy
21 available by state or local law is hereby excluded. No such
22 notice shall be used, or if used be effective, when the owner
23 has made identical sexually reproducible plant material
24 available to the public, as by sale thereof.

1 **Chapter 11.—INFRINGEMENT OF PLANT VARIETY**
2 **PROTECTION**

3 **Sec. 111. Infringement of Plant Variety Protection.**

4 Except as otherwise provided in this title, it shall be an
5 infringement of the rights of a proprietor of a novel variety
6 to perform without authority, any of the following acts in
7 the United States, or in commerce which can be regulated by
8 Congress or affecting such commerce, prior to expiration of
9 the right to plant variety protection but after either the issue
10 of the certificate or the distribution of a novel plant variety
11 with the notice under section 127:

12 (1) sell the novel variety, or offer it or expose it for
13 sale, deliver it, ship it, consign it, exchange it, or solicit
14 an offer to buy it, or any other transfer of title or pos-
15 session of it; except as otherwise provided herein;

16 (2) import the novel variety into, or export it from,
17 the United States;

18 (3) multiply the novel variety as a step in market-
19 ing (for growing purposes) the variety; or

20 (4) use the novel variety in producing (as dis-
21 tinguished from developing) a hybrid or different va-
22 riety therefrom; or

23 (5) use seed which had been marked "propaga-

1 tion prohibited" or progeny thereof to propagate the
2 novel variety; or

3 (6) dispense the novel variety to another, in a
4 form which can be propagated, without notice as to
5 being a protected variety under which it was received;
6 or

7 (7) perform any of the foregoing acts even in in-
8 stances in which the novel variety is multiplied other
9 than sexually; or

10 (8) instigate or actively induce performance of any
11 of the foregoing acts.

12 **Sec. 112. Right To Save Seed.**

13 Except under subsections (3) and (4) of section 111,
14 it shall not infringe any right hereunder for a person to save
15 seed and grow the resulting variety for his own use.

16 **Sec. 113. Private Defense Against Delayed Application.**

17 No plant variety protection under this Act shall abridge
18 the rights of any person who had developed a variety or his
19 successor in business to produce, reproduce or sell his own
20 variety, beginning more than one year prior to the effective
21 filing date of an adverse application for a certificate of plant
22 variety protection.

23 **Sec. 114. Crop Exemption.**

24 It shall not be an infringement to sell seed grown from
25 the protected variety, obtained (for growing) by authority

1 of the proprietor or by saving seed under section 112, for use
2 as food, feed, in manufacture or the like, if the sale is bona
3 fide for that purpose, and is in channels which are usual for
4 that purpose and in a manner exclusively for that purpose. A
5 purchaser who diverts such seed from those channels to grow-
6 ing purposes shall not be entitled to any benefit for lack of
7 notice under section 127.

8 **Sec. 115. Research Exemption.**

9 The use and reproduction of a protected variety for plant
10 breeding or other bona fide research shall not constitute an
11 infringement of the protection provided under this Act.

12 **Sec. 116. Intermediary Exemption.**

13 It shall not be an infringement to deliver, ship, consign
14 or other acts of transport or change of possession when per-
15 formed by a mere carrier or other innocent intermediaries, or
16 to offer for sale by an innocent advertising medium.

17 **Chapter 12.—REMEDIES FOR INFRINGEMENT OF**
18 **PLANT VARIETY PROTECTION, AND OTHER**
19 **ACTIONS**

20 **Sec. 121. Remedy for Infringement of Plant Variety Pro-**
21 **tection.**

22 A proprietor shall have remedy by civil action for in-
23 fringement of his plant variety protection under section 111.
24 If a variety is sold under the name of a proprietor's variety as

1 shown in his certificate, there is a prima facie presumption
2 that it is the same variety.

3 **Sec. 122. Presumption of Validity; Defenses.**

4 (a) Certificates of plant variety protection shall be pre-
5 sumed valid. The burden of establishing invalidity of a plant
6 variety protection shall rest on the party asserting invalidity.

7 (b) The following shall be defenses in any action charg-
8 ing infringement and shall be pleaded: (1) noninfringement,
9 absence of liability for infringement, or unenforceability; (2)
10 invalidity of the plant variety protection in suit on any
11 ground specified in section 42 of this title as a condition for
12 protectability; (3) invalidity of the plant variety protection
13 in suit for failure to comply with any requirement of section
14 52; (4) that the asserted infringement was performed un-
15 der an existing certificate adverse to that asserted and prior
16 to notice of the infringement; and (5) any other fact or
17 act made a defense by this Act.

18 **Sec. 123. Injunction.**

19 The several courts having jurisdiction of cases under this
20 title may grant injunctions in accordance with the principles
21 of equity to prevent the violation of any right hereunder on
22 such terms as the court deems reasonable.

23 **Sec. 124. Damages.**

24 (a) Upon finding for the proprietor the court shall
25 award damages adequate to compensate for the infringement

1 but in no event less than a reasonable royalty for the use
2 made of the variety by the infringer, together with interest
3 and costs as fixed by the court.

4 (b) When the damages are not determined by the jury,
5 the court shall determine them. In either event the court may
6 increase the damages up to three times the amount deter-
7 mined.

8 (c) The court may receive expert testimony as an aid
9 to the determination of damages or of what royalty would
10 be reasonable under the circumstances.

11 (d) As to infringement prior to, or resulting from a
12 planting prior to, issuance of a certificate for the infringed
13 variety, a court finding the infringer to have established
14 innocent intentions, shall have discretion as to awarding
15 damages.

16 **Sec. 125. Attorney Fees.**

17 The court in exceptional cases may award reasonable
18 attorney fees to the prevailing party.

19 **Sec. 126. Time Limitation on Damages.**

20 (a) No recovery shall be had for any infringement
21 committed more than six years (or three years with knowl-
22 edge of the proprietor) prior to the filing of the complaint
23 or counterclaim for infringement in the action.

24 (b) In the case of claims against the United States

1 Government for unauthorized use of a protected variety, the
2 period before bringing suit, up to six years, between the date
3 of receipt of written claim for compensation by the depart-
4 ment or agency of the Government having authority to settle
5 such claim, and the date of mailing by the Government of a
6 notice to the claimant that his claim has been denied shall
7 not be counted as part of the period referred to in the pre-
8 ceding paragraph.

9 **Sec. 127. Limitation of Damages; Marking and Notice.**

10 Proprietors may give notice to the public by physically
11 associating with or affixing to the container of seed of a novel
12 variety or by fixing to the novel variety, a label containing
13 the words "Propagation Prohibited" and after the certificate
14 issues, such additional words as "U.S. Protected Variety".
15 In the event the novel variety is distributed by authorization
16 of the proprietor and is received by the infringer without
17 such marking, no damages shall be recovered against such
18 infringer by the proprietor in any action for infringement,
19 except on proof that the infringer was notified of the in-
20 fringement and continued to infringe thereafter, in which
21 event damages may be recovered only for infringement oc-
22 curring after such notice. As to both damages and injunc-
23 tion, a court shall have discretion to be lenient as to disposal
24 of materials acquired in good faith by acts prior to such
25 notice.

1 **Sec. 128. False Marking.**

2 (a) Each of the following acts, if performed in connec-
3 tion with the sale, offering for sale, or advertising of sexually
4 reproducible plant material, is prohibited, and the Commis-
5 sioner may, if he determines after an opportunity for hear-
6 ing that the act is being so performed, issue an order to
7 cease and desist, said order being binding unless appealed
8 to the appropriate United States Court of Appeals under
9 the Federal Rules of Appellate Procedure:

10 (1) Use of the words "U.S. Protected Variety"
11 or any word or number importing that the material is
12 a variety protected under certificate, when it is not.

13 (2) Use of any wording importing that the ma-
14 terial is a variety for which an application for plant
15 variety protection is pending, when it is not.

16 (3) Use of the phrase "propagation prohibited" or
17 similar phrase without reasonable basis, a statement of
18 this basis being promptly filed with the Commissioner if
19 the phrase is used beyond experimental testing and no
20 application has been filed. Any reasonable basis expires
21 one year after commencement of use of the phrase be-
22 yond experimental testing except as justified thereafter
23 by a pending application or a certificate still in force.

24 (b) Anyone convicted of violating a binding cease and

1 desist order, or of performing any act prohibited in sub-
 2 section (a) of this section for the purpose of deceiving the
 3 public, shall be fined not more than \$10,000 and not less
 4 than \$500.

5 (c) Anyone whose business is damaged or is likely to
 6 be damaged by an act prohibited in subsection (a) of this
 7 section, or is subjected to competition in connection with
 8 which such act is performed, may have remedy by civil
 9 action.

10 **Sec. 129. Nonresident Proprietors; Service and Notice.**

11 Every proprietor not residing in the United States may
 12 file in the Plant Variety Protection Office a written desig-
 13 nation stating the name and address of a person residing
 14 within the United States on whom may be served process
 15 or notice of proceedings affecting the plant variety protec-
 16 tion or rights thereunder. If the person designated cannot
 17 be found at the address given in the last designation, or if
 18 no person has been designated, the United States District
 19 Court for the District of Columbia shall have jurisdiction
 20 and summons shall be served by publication or otherwise as
 21 the court directs. The court shall have the same jurisdiction
 22 to take any action respecting the plant variety protection, or
 23 rights thereunder that it would have if the proprietor were
 24 personally within the jurisdiction of the court.

1 **Chapter 13.—INTENT AND SEVERABILITY**

2 **Sec. 131. Intent.**

3 It is the intent of Congress to provide the indicated
4 protection for new varieties by exercise of any constitutional
5 power needed for that end, so as to afford adequate encour-
6 agement for research, and for marketing when appropriate,
7 to yield for the public the benefits of new varieties. Consti-
8 tutional clauses 3 and 8 of article I, section 8 are both relied
9 upon.

10 **Sec. 132. Severability.**

11 If this Act is held unconstitutional as to some provisions
12 or circumstances, it shall remain in force as to the remainder
13 or with necessary implied limitations as to other circum-
14 stances, except that in no event may a provision, because a
15 stated exemption from that provision is invalid, be effective
16 in the area of that exemption.

17 **Chapter 14.—TEMPORARY PROVISION AND RE-**
18 **LATED ENACTMENTS**

19 **Sec. 141. Effective Date.**

20 The foregoing Act shall take effect upon approval.
21 Applications may be filed with the Secretary and held by him
22 until the Office of Plant Variety Protection is organized and
23 in operation.

24 **Sec. 142. Amendment of Federal Seed Act.**

1 The Federal Seed Act (53 Stat. 1275) is amended as
2 follows:

3 (a) By adding at the end thereof:

4 **“TITLE V—SALE OF UNCERTIFIED SEED OF**
5 **PROTECTED VARIETY**

6 **“Section 501.**

7 “(a) It shall be unlawful in the United States or in in-
8 terstate or foreign commerce to sell by variety name seed not
9 certified by an official seed certifying agency when it is a
10 variety for which a certificate of plant variety protection
11 under the Plant Variety Protection Act specifies sale only
12 as a class of certified seed: *Provided*, That such seed may
13 be labeled as to variety name when used in a mixture by, or
14 with the approval of, the proprietor of the variety.”

15 (b) By adding at the end of section 102 the following
16 wording: Seed shall be certified only when the basic seed
17 from which a variety was produced was furnished by the
18 originator of the variety, his successor in title, and, when
19 specified, conforms to the number of generations designated
20 by the originator.

21 **Sec. 143. Amendment of Judicial Code.**

22 Title 28 of the United States Code, entitled Judicial
23 Code and Judiciary, is amended as follows:

24 (a) After section 1544 add:

1 **Sec. 1545. Decision of the Plant Variety Protection Office.**

2 The Court of Customs and Patent Appeals shall have
3 nonexclusive jurisdiction to review by appeal decisions of
4 the Plant Variety Protection Office, provided that the deci-
5 sion appealed from is on appeal within the Plant Variety
6 Protection Office, if such appeal is permitted.

7 (b) In section 1338 after "Patents" in the heading,
8 after "patents" and after "patent" (both occurrences) insert
9 ", plant variety protection".

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, D.C., June 10, 1970.

HON. ALLEN J. ELLENDER,
Chairman, Committee on Agriculture and Forestry,
U.S. Senate.

DEAR MR. CHAIRMAN: This is in reply to your request of October 24, 1969, for a report on S. 3070, a bill to encourage the development of novel varieties of sexually reproduced plants and making them available to the public, by making protection available to those who breed, develop, or discover them, thereby promoting progress in the useful art of agriculture.

This Department supports the objective of S. 3070.

We believe that it is desirable to provide incentive for private enterprise to undertake the research and development required to produce novel varieties of sexually produced plants. The proposed legislation would provide such incentive.

The Department is not prepared at this time to comment on the specific provisions of S. 3070. The Administration has under consideration a number of important changes to the laws protecting proprietary rights in the United States. This review will have implications for programs such as the one proposed here. We wish to reserve further comment on the provisions of S. 3070 until we have had an opportunity to evaluate them in the light of the findings of this Administration review.

The Bureau of the Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

J. PHIL CAMPBELL,
Under Secretary.

Senator JORDAN. I think it is an important piece of legislation. I am glad to see so many witnesses here. I do not think I am going to get to hear all of you, because I am going to have to leave here at 10:30. The Senate opens early today, and I have a duty to perform before that. If we do not get through, I shall set another day real soon to come back to hear the rest of you, because I do want to hear all of those who want to be heard and have something to contribute to this piece of legislation.

Senator MILLER. I am glad you are here this morning, because you are one of the most interested persons in this particular bill. It has been through your efforts that this bill has gotten this far, and I want to thank you for being with us.

You may proceed in any way you like.

**STATEMENT OF HON. JACK MILLER, A U.S. SENATOR FROM THE
STATE OF IOWA**

Senator MILLER. Thank you, Mr. Chairman. I deeply appreciate the opportunity to make this statement in support of S. 3070, a bill I introduced on October 23, 1969, along with Senators Dole, Eastland, Hollings, yourself, and Young of North Dakota as cosponsors. I am particularly grateful to you, Mr. Chairman, for scheduling this hearing immediately following hearings in the House on a similar bill.

All should be interested in the growth and well-being of agriculture, the world's largest industry. One of the smallest but most vital raw materials for this industry is seed. American farmers spend approximately three-quarters of a billion dollars for seed each year. The bill under your consideration is designed to encourage the development of new varieties of sexually reproduced plants by providing protection for those who breed and develop them, thus promoting the growth and well-being of agriculture.

The protection afforded by this bill covers plants which are reproduced by seeds, such as alfalfa, carrots, lettuce and grass, to name just a few. It would leave unchanged the present Federal laws which give protection to plant varieties reproduced asexually—that is, other than by seeds—such as by cutting and grafting.

Breeding programs, whether public or private, require substantial investments in research, facilities, land and labor. A private company cannot afford to make such investments unless it has the opportunity to make a profit. Heavy commercial investments in research have already produced new varieties of corn and sorghum hybrids. One of the most well-known discoveries of recent years is high lysine corn, the inbred lines of which would be covered by this bill. Hybrids have their own built-in protection for their developer, since he can control the inbred or parental stocks and the hybrid cannot be reproduced from hybrid seed. Therefore, hybrids are excluded from the bill.

Other areas where research has produced useful new varieties are in the vegetable-seed industry, where open pollinated tomato varieties have been developed which are much more adaptable to mechanical harvesting than previous varieties, and in the grain food industry where new open pollinated wheat varieties and dwarf rice have been developed.

The constitutional authority for providing plant variety protection is found in the authors and inventors' clause of the U.S. Constitution (art. I, sec. 8, clause 8), which gives Congress the power to secure "for limited times to authors and inventors the exclusive right to their respective writings and discoveries;" and also in the commerce clause (art. I, sec. 8, clause 3). The Constitution clearly intended recognition of inventors and discoverers for their work in all segments of industry, including agriculture. Therefore, it is entirely proper to extend some form of rights to plant breeders of sexually reproduced plants.

At this time, Mr. Chairman, I would like to discuss the principal features of S. 3070.

(1) The new law would be administered by a new office to be established within the U.S. Department of Agriculture called the Plant Variety Protection Office and headed by a commissioner appointed by the Secretary of Agriculture. The Commissioner of Plant Variety Protection would be assisted by a plant variety protection board which would be made up of approximately equal representation from the seed industry sector on the one hand and the Government or public sector on the other. The review board would be empowered to make advisory decisions on appeals from decisions of the examiner. It would also advise the Commissioner concerning the rules and regulations which supplement the act.

(2) Applications for plant variety protection would be handled much as industrial patent applications are. The breeder would submit a detailed, written description of his new variety in which he would set forth his claims for novelty, for stability, and for reproductibility. A sample of the basic seed would also be deposited to protect the public interest.

(3) Breeders using the system would be charged fees, so that the whole program could be essentially self-supporting. The fee would vary depending on whether extra copies of the certificate of protection are

desired, an appeal is made, an assignment is involved, or whether there is a delay in payment, but the basic application fee would be \$50.

The basic fee structure in the bill was patterned after the existing plant patent law. However, patent fees under that law only cover about 60 percent of the Patent Office expenses. The committee might wish to consider an amendment which would establish a fee structure sufficient to cover the costs of the program or, as an alternative, which would authorize the Secretary of Agriculture to establish such a fee schedule.

(4) Any sexually reproduced plant other than hybrids, fungi, and bacteria would be protectable under the new act. A breeder or developer would have 1 year after commercial sale of the variety to apply for protection. This scheme would be available to foreign breeders to the extent their governments afford like privileges to nationals of the United States.

(5) Once approved by the Plant Variety Protection Office, a certificate of plant variety protection would be issued. This certificate would allow the owner to imprint some such statement as "U.S. Protected Variety" on the label of the seed package, thus notifying the public of the protected status of his variety. Or, should the applicant desire, he could additionally elect to protect his variety under the certification system, in which case the variety could be sold only as certified seed, which fact would be made evident on the special certification label.

(6) Applications or certificates of plant variety protection would be assignable. The proprietor could grant or convey an exclusive right to the use of his varieties in the United States or any part of it.

(7) The term of protection proposed for all corps would be 17 years. This is the same period of protection granted asexual plants under the Plant Patent Act.

(8) Infringement of the right granted would occur when anyone, without authority, (a) sells or offers for sale the protected variety; (b) reproduces the variety as a step in the production of another variety of hybrid; (c) imports or exports the variety into or from the United States; or, (d) multiplies the novel variety as a step in marketing, such as by producing seed for growing transplants for sale.

(9) The law would include a special exemption for farmers. They would be allowed to produce seed of a protected variety for their own use.

(10) Defense of the right granted would be through civil action. In such actions, a certificate of plant variety protection would be presumed valid and it would, therefore, be incumbent on the defendant in the civil action to establish invalidity of the certificate. Should the court decide in favor of the plaintiff, damages, would be awarded which, in no event, would be less than a reasonable royalty for the use made of the protected variety by the infringer.

This legislation is designed to serve as a stimulus for investment of private funds in variety research and development of seed. Agricultural producers will benefit from the new and improved varieties providing larger yields, greater disease and insect resistance, increased protein, oil and fiber strength, and other crop improvements. The ultimate consumer will also benefit from the greater efficiency of crop production.

New and improved varieties of high quality seed must be developed to keep our farmers competitive, both at home and abroad. American

agriculture constantly needs new crop varieties, because the hazards from disease and insect pests are constantly changing. For example, some plants which are immune to certain diseases, such as rusts, are not immune to new strains of those diseases. We cannot afford to stand still.

I hope this subcommittee will act favorably upon this legislation as soon as possible.

Thank you, Mr. Chairman.

Senator JORDAN. Thank you very much. That is a fine statement. I hope you can stay around a little while in case somebody wishes to ask you a question.

Senator MILLER. I shall be happy to.

Senator JORDAN. Thank you.

Mr. Blum? Mr. Blum is a Deputy Administrator of Regulatory Programs, Consumer and Marketing Service, U.S. Department of Agriculture.

Mr. Blum, we are glad to have you with us this morning. We shall be glad to hear from you, sir.

STATEMENT OF JOHN C. BLUM, DEPUTY ADMINISTRATOR, REGULATORY PROGRAMS, CONSUMER AND MARKETING SERVICE, AND MARTIN G. WEISS, ASSISTANT TO DEPUTY ADMINISTRATOR FOR FARM RESEARCH, AGRICULTURAL RESEARCH SERVICE, U.S. DEPARTMENT OF AGRICULTURE

Mr. BLUM. Thank you, sir. I appreciate the invitation to appear before your committee and present the views of the Department of Agriculture on S. 3070. We have submitted an official report on this bill to the chairman of the Senate Committee on Agriculture and Forestry.

The bill is designed, in the words of its preamble, "to encourage the development of novel varieties of sexually reproduced plants and making them available to the public, by making protection available to those who breed, develop, or discover them, thereby promoting progress in the useful art of agriculture."

The Department supports this objective of the bill.

We believe that it is desirable to provide incentive for private enterprise to undertake the research and development required to produce novel varieties of sexually produced plants. The proposed legislation would provide such incentive.

However, the Department is not prepared at this time to comment on the specific provisions of S. 3070. The administration has under consideration a number of important changes to the laws protecting proprietary rights and technical innovations in the United States. This review will have implications for programs such as the one proposed here. We wish to reserve further comment on the provisions of S. 3070 until we have had an opportunity to evaluate them in the light of the findings of this administration review.

Although I am unable to comment on policy aspects of the proposed bill, I have with me members of the Department's technical staff who would be glad to assist in answering any questions you may have concerning the technical aspects of the bill, or if time precludes this this morning, we shall be glad to provide for the record any additional information you may desire.

This concludes my brief statement.

Senator JORDAN. Thank you.

Mr. Blum, four questions have been given to me here to be asked you. If you do not have the answer or some of your associates do not have it, you may supply it for the record later on.

What would be the status of the varieties now being sold to the farmers?

Mr. BLUM. If Dr. Martin Weiss may respond to this——

Senator JORDAN. Certainly.

Mr. WEISS. I believe there is a provision in the bill, sir, that will permit a variety to be protected if it has been sold for 1 year, but 1 year only, prior to the date of filing.

Senator JORDAN. It is my understanding that the Department supports the principle of this legislation.

Mr. BLUM. Yes.

Senator JORDAN. Do you believe the legislation is of benefit to American agriculture?

Mr. BLUM. Yes; we do, sir.

Senator JORDAN. Of course, your statement here is at odds.

Mr. BLUM. Subject to——

Senator JORDAN. Yes, I understand.

Do you believe this legislation will be in the general public interest?

Mr. BLUM. Yes; we do.

Senator JORDAN. I certainly do, myself. Take wheat, for instance. You know very well rice has been developed—European rice—which has gone a long way toward solving the hunger problems around the world and a great many other important problems. It is certainly important when a person or a company develops a new strain or seed that far outproduces another or is resistant to disease, and so forth, that he should be protected.

Mr. BLUM. Yes, sir.

Senator JORDAN. I see no reason why anybody would be against that type of legislation.

Mr. BLUM. The central purpose of the bill is to encourage innovation and development of things which we believe to be in the public interest.

Senator JORDAN. Yes. There is not much reason for a man or a company or whatever it might be to work hard for years—and it takes years, sometimes, to produce a new strain of anything—and not be able to get any benefit from it.

Mr. BLUM. Yes.

Senator JORDAN. Thank you very much.

Do any of your associates have anything to add?

Mr. BLUM. No; thank you.

Senator MILLER. Could I inquire?

Senator JORDAN. Yes.

Senator MILLER. Mr. Blum, while it is true that the bill may have an immediate impact on the protection afforded the developers of seed, is it not also true that the ultimate beneficiary of this is the consumer, through more efficient agriculture?

Mr. BLUM. I think this is included in the public-interest aspect that we said we thought would be furthered by this, that the consumer would have some interest in having available new varieties and more efficient ways of doing business.

Senator MILLER. So, I think it might well be said that in many respects this is a consumer bill.

Mr. BLUM. It certainly has consumer-benefit aspects.

Senator MILLER. And public interest, of course, goes beyond just the consumer.

We are concerned about remaining competitive in international markets. If we do not encourage investment by our own developers here in this country, people can go around us in other countries which compete with us in world markets. Is that not so?

Mr. BLUM. That is right, Senator.

Senator MILLER. Thank you very much.

Could I ask you one further question?

Mr. BLUM. Certainly.

Senator MILLER. Are you familiar with what foreign countries have similar type protection systems?

Mr. BLUM. We can furnish that.

Mr. Weiss, are you familiar with what foreign countries have similar type protection systems?

Mr. WEISS. There are a number of foreign countries that have ratified the Paris Convention of 1961, which is a protection of sexually and asexually reproduced plant varieities. That is quite similar. This Paris convention does provide for official testing to determine distinctness, uniformity and stability of a variety. That is, I believe, the major difference between the European so-called breeders' rights and the bill before us.

Senator MILLER. Do you know whether Japan has such a law?

Mr. WEISS. I do not believe Japan has.

Senator MILLER. Would you care to research this a little and provide that information for the record?

Mr. BLUM. Yes, sir, we will.

(The information referred to follows:)

The countries which have ratified the Convention of Paris for the Protection of New Varieties of Plants, December, 1961, and are now members of the Council of the International Union for the Protection of New Plant Varieties are Denmark, the Federal Republic of Germany, the Netherlands, and the United Kingdom. The Convention has been signed but not yet ratified by Belgium, France, Italy, and Switzerland. Austria has a national system for protection of plant varieties.

Senator MILLER. Thank you, sir.

Senator JORDAN. Thank you.

Mr. White?

Mr. White is chairman, breeders' rights study committee, American Seed Trade Association, Minneapolis, Minn.

STATEMENT OF ALLENBY L. WHITE, CHAIRMAN, BREEDERS' RIGHTS STUDY COMMITTEE, AMERICAN SEED TRADE ASSOCIATION, MINNEAPOLIS, MINN.

Mr. WHITE. Mr. Chairman, my name is Allenby L. White. I am chairman of the American Seed Trade Association's breeders' rights study committee and vice president, research and market development, for Northrup, King & Co., a company headquartered in Minneapolis, Minn., selling, developing, and producing many kinds of seed.

I have with me here today Mr. John I. Sutherland, executive vice president, American Seed Trade Association, and Mr. Dale Porter, legal counsel for the Pioneer Hybrid Corn Co.

We have prepared a complete testimony in support of this bill which we would like to offer for the record, with your approval.

Senator JORDAN. It will be carried in the record in its entirety.

(The prepared statement of Mr. White is as follows:)

I—SUPPORT

My name is Allenby L. White. I am Chairman of the American Seed Trade Association's Breeders' Rights Study Committee and Vice President, Research and Market Development, for Northrup, King & Company, a company headquartered in Minneapolis, Minnesota, selling, developing and producing many kinds of seed.

The American Seed Trade Association represents over 450 seed companies, 41 state and regional associations, and we believe the seed industry at large. The Association headquarters are located in the Executive Building, 1030 15th Street N.W., Washington, D.C.

The American Seed Trade Association strongly supports S. 3070, and related bills, sometimes called the "Plant Variety Protection Act," because of a profound belief that this legislation will benefit not only plant breeders but will bestow even greater benefits on American Agriculture and the community at large. In the following testimony, we shall attempt to provide the substance for this belief.

II—THE BASIC PRINCIPLES OF LEGAL PROTECTION

Article 1, Section 8, of the United States Constitution says:

"The Congress shall have the power . . . to promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries."

Congress acted on this constitutional mandate by enacting some patent legislation as early as 1790. Thus, it may be observed, the United States patent system is an institution nearly as old as the Nation itself.

Much of the vigor and enterprise of the United States, both culturally and industrially speaking, can be attributed to its patent system. Abraham Lincoln once said that the American patent system, "supplied the fuel of incentive to the fires of genius," thereby paying tribute to the innovators and creators of our Nation.

On May 23, 1930, the Townsend-Purnell Plant Patent Act was enacted into law. This legislation provided, for the first time in our history the discoverer or originator of certain asexually-reproduced plant varieties with the right to legal protection for his developments. Senate Report No. 315, dated April 2, 1930, cited the reasons for this legislation and stated, in part:

"The purpose of the bill is to afford agriculture, so far as practicable, the same opportunity to participate in the benefits of the patent system as has been given industry, and thus assist in placing agriculture on a basis of economic equality with industry—

"Today the plant breeder has no adequate financial incentives to enter upon his work. A new variety, once it has left the hands of the breeder, may be reproduced in unlimited quantity by all. The originator's only hope of financial reimbursement is through high prices for the comparatively few reproductions that he may dispose of during the first two or three years . . . Today, plant breeding and research is dependent, in large part, upon government funds to government experiment stations, or to the limited endeavors of the amateur breeder. It is hoped this bill will afford a sound basis for investing capital in plant breeding and, consequently, stimulate development through private funds."

Unhappily, this excellent law, even with its later amendment, provided legal protection only for certain asexually-reproduced species. It left without legal protection varieties of those species which comprise the bulk of the Nation's total crop.

In Europe, meanwhile, certain nations, increasingly concerned with their agricultural productivity, began to perceive that one important solution to this basic national problem lay in spurring their plant breeding community to produce better, higher-yielding varieties, and enacted laws providing plant breeders with legal protection.

A number of European countries, having seen the benefits of such a law, came together to develop a convention which, when ratified by a majority of the cooperating countries, would come into force and provide the framework upon which national "breeders' rights" laws would be based. This convention is now in force and most western European nations now either have new laws offering legal protection to plant breeders, or have such laws in late stages of development.

But, in the United States today, plant breeders still have no law protecting their innovations except as to the limited area of asexual (non-sexual) reproduction. If today's situation continues to persist, the American breeder and American agriculture will face an ever-growing disadvantage, not only in the international marketing of seed, but in the food, feed and fiber crops produced from it, since the productivity of such crops is determined in so small measure by the yield potential built into the varieties from which such crops are produced.

That the principle of legal protection for plant varieties is a sound one seems beyond dispute. This belief, in the principle of providing plant breeders with protection, seems amply supported by the United States Constitution; by the foresight of Congress, as elucidated in the quoted Senate Report No. 315, and by the fact that the western European nations, and other nations, have accepted this principle to the extent of entering into regional conventions and enacting national laws codifying the basic principle.

III—THE BENEFITS OF LEGAL PROTECTION FOR PLANT VARIETIES

The benefits derived through provision of legal protection for plant varieties have been amply demonstrated in western Europe where such protection has led to a great flowering of plant breeding, with the concomitant benefits of a more productive national agriculture and improved agricultural export. In the United States, where legal protection for plant varieties is not now available, we believe all of the following benefits may be expected from providing such protection:

1. It will greatly stimulate private plant breeding.
2. It will allow our government agricultural experiment stations to increase their efforts on needed basic research.
3. It would permit public expenditures for applied plant breeding to be deviated to important areas which industry may not pursue.
4. It will give farmers and gardeners more choice, and varieties which are better in yield or in quality, etc.
5. It will make American agricultural products more competitive in world markets.
6. Consumers and other purchasers of crops will benefit: in some instances by improved quality, in others by aiding the production needed to serve them.

An explanatory word or two on these foreseen benefits may be in order.

The new law will definitely stimulate plant breeding. Experience in England provides a good case history. Prior to the enactment of its Plant Varieties and Seeds Act 1964, little plant breeding was done in England by private companies, and not much was done by government agencies. Since the new law came into effect, there has been a great upsurge of plant breeding, and a once moribund seed industry is now showing signs of great new vitality.

And we can, to some extent, draw on our own experience in reaching the conclusion that legal protection will stimulate private plant breeding. Prior to the Plant Patent Act of 1930, there was very little private plant breeding done aside from that performed by a handful of amateurs or hobbyists. Since then, some 2,700 plant patents have been issued, largely to commercial breeders. It is difficult to estimate the total value of the fruits, nuts, cut flowers and ornamentals deriving from patented varieties, but some insight into the value of this commerce may be obtained by considering the case of roses. It is estimated that 50,000,000 rose plants, over 80% of which are from patent varieties, are sold to home gardeners in the United States each year. These plants have an estimated wholesale value of \$35,000,000. Additionally, there are some 20,000,000 rose plants grown in U.S. greenhouses. More than 90% of these are of patented varieties and the flowers produced from them are estimated to have a commercial value in excess of \$50,000,000.

The availability of legal protection for plant varieties will allow our government experiment stations to concentrate more of their efforts on greatly needed basis research. Plant breeding is becoming an ever more sophisticated science. If we are to continue to keep pace with developments elsewhere, our scientific institutions must constantly search out the new genetic techniques and properties which can be incorporated into the overall American plant breeding effort.

Private seedsmen cannot afford to do this kind of research. The public institutions are well equipped for such investigations.

The availability of protection for plant breeders should increase the benefits from public expenditures where they continue to be used for applied plant breeding. Many public institutions today spend sizeable sums of money on the development of finished plant varieties. Once released, these experiment station varieties are made available to all. Advertising and marketing such varieties is often not attractive. Within a short time, many of those which are marketed disappear from the market because those who handle them learn they cannot make the kind of return on their investment needed to allow them to continually handle such varieties. This is a phenomenon well-known to agricultural experiment station directors, and it is one reason, we believe, that these officials now look favorably on protection for plant varieties.

Legal protection for plant varieties will give American farmers the choice of more and better varieties. As pointed out, many experiment station varieties are short-lived on the market. This knowledge has tended to discourage public institutions from applied plant breeding. The result is that farmers today are not being offered enough choices and not enough work is being done on some of our most important crops. Soybeans, one of our biggest crops, provides a good example of a crop that could and would be more productive as a result of the more and better varieties which would be made available as a result of legal protection for plant varieties. Other major U.S. crops, like cotton, wheat, barley, oats and rice for example, now largely ignored by the private researchers, would almost certainly benefit greatly from the impact of a competitive, private plant breeding effort.

Legal protection for plant varieties should make U.S. agricultural products more competitive in world markets. Higher crop yields help reduce per unit costs of the finished product, be it meat, milk, food or fiber. Clear examples of this may be seen by noting the dramatic increase in yields of just two crops—corn and sorghum—which, as a result of their adaptation to hybridization, have been the object of keen competition among private plant breeders of this country. One hesitates to speculate what our position in the world market of these two crops might be if our breeders had not found it worth their while to solve the genetic riddles involved in unlocking greater yields of these important feed grains.

Although the foregoing statement has emphasized benefits to farmers, it is important to realize that all consumers and intermediate purchasers of farm products share in these benefits. To illustrate this we need only ask what would now be the cost to the consumer of almost any farm-derived product, if a farmer could only produce as much per acre as he did in 1930. In addition, it is primarily the consumer who benefits from those new varieties which provide the consumer with improved quality.

IV—ACTIVITIES IN CONNECTION WITH LEGAL PROTECTION FOR PLANT VARIETIES

The American Seed Trade Association has long been aware of the lack of legal protection for sexually-reproduced plant varieties, alive to the resulting inattention to the breeding of such varieties aside from those which could have biological protection because hybridized, and concerned about the continuing consequences both to the seed industry and to American agriculture. In 1961 the Association appointed a Breeders' Rights Study Committee to investigate ways and means of providing legal protection for plant varieties.

The Committee explored several means of accomplishing its objective. At one time it was decided that of all the alternatives considered, a simple amendment to the Plant Patent Act would be a practical solution.

The proposed amendment to the act called for insertion of the words, "or sexually" in Sections 161 and 163 of the act, the net effect of which would be to permit the patenting of sexually-reproduced, as well as asexually-reproduced, varieties. This amendment failed in the standing Subcommittee on Patents, Trademarks and Copyrights of the Committee of the Judiciary, but in referring to this proposed amendment, Senator McClellan, Chairman, said in part:

"The Subcommittee has received testimony both supporting and opposing an extension of protection to include sexually-reproduced varieties of plants. I have been impressed by the efforts of those who are seeking to develop new varieties of plants. These research activities should be encouraged by the granting of appropriate incentives. A significant difference of opinion exists as to the feasibility of accomplishing this objective through the plant patent statute.

I understand that representatives of the American Seed Trade Association, the National Cotton Council, and other interested parties, plan to explore this subject further during the next few months with representatives of the Department of Agriculture and Patent Office. I hope that these conversations result in agreement as to a feasible course of action as to provide protection either within the patent system or by some other appropriate mechanism."

Attempts to reach agreement on the proposed amendment to the Plant Patent Act failed, and faults in that approach were recognized, so the American Seed Trade Association next undertook to develop a statute more carefully suited for plant variety protection. This effort resulted in a prototype of the legislation we are endorsing here today.

During the course of its attempts to develop a method for protecting plant varieties, the American Seed Trade Association has conscientiously consulted public and private bodies with any interest in this problem. Among those groups consulted are the United States Department of Agriculture, Agricultural Research Service and Consumer and Marketing Service; the Agricultural Experiment Station Directors, Experiment Station Committee on Policy; the Association of Seed Control Officials; the Association of Official Seed Certifying Agencies; the National Cotton Council; and other such organizations. Valuable counsel was received from all, the result of which was a number of new draftings all designed to make the best possible use of the new provisions or amendments urged upon us by our conferees.

Since the consultations referred to above had been held individually with the public groups just referred to, and since, therefore, there remained the possibility that changes suggested by one group might not be acceptable to another, it was decided to convene a conference during which experts of all the cited public agencies or organizations would have an opportunity, after agency-study of the then latest draft, to participate in such a meeting with the necessary directives and authority.

Accordingly, on March 25-26, 1969, a meeting was convened in Washington, D.C. which included representation from:

- United States Department of Agriculture, Agricultural Research Service.
- United States Department of Agriculture, Consumer and Marketing Service.
- State Agricultural Experiment Station Directors.
- Association of Seed Control Officials.
- Association of Official Seed Certifying Agencies.
- The National Council of Commercial Plant Breeders.
- The American Seed Trade Association.

During the course of this meeting, the proposed legislation was examined on a point-by-point basis and many significant amendments were made, most of which, in one way or another, were concerned with the public interest, including especially that of the farmer.

But, also raised during this meeting was the question of whether there should not be another method of protecting plant varieties. The Seed Certification group and the Agricultural Experiment Station Directors had both been directed by their constituents to support the principle of plant variety protection as laid down in the proposed act, but to also request that seed certification provide still another, and separate, means of protecting plant varieties. This directive raised the basic question of the wisdom of having two separate plant variety protection laws and a corollary question of legal prosecution of the right granted since, in one instance, the injured party would rely on civil court action for redress and, in the other, violations would be criminal acts, the prosecution of which would be conducted by the Federal Government.

It was decided there need not be two separate laws but, rather, that both forms of protection could be provided under the proposed Plant Variety Protection Act with an appropriate amendment to the Federal Seed Act. This solution, it was believed by the group, would satisfy the desires expressed by both industry and public organizations; would simplify the whole question of plant variety protection, and would give the individual applicant the option of obtaining either kind of protection through one basic source.

Very briefly, Mr. Chairman, that is a summary of the actions the American Seed Trade Association has taken to consult with public bodies; to assure that the public interest would be served by the proposed legislation, and to shape the legislation we are here today to endorse. We shall not attempt to describe for you the countless informal meetings we held with interested state and federal workers; the specific ways in which these discussions have modified both the

word and thrust of the proposed legislation, or the splendid spirit of cooperation which has characterized all these meetings. We sincerely believe that the product of these many discussions—the proposed Plant Variety Protection Act—represents a real testimonial to the efficacy of sincere government-industry dialogue.

V—COMMENTARY ON SALIENT PROVISIONS OF THE PLANT VARIETY PROTECTION ACT

The Plant Variety Protection Act is designed to provide legal protection for sexually-reproduced plant varieties, a class for which legal protection has heretofore been unavailable.

In the commentary which follows, some salient features of the Act are examined in the light of their meaning and purpose.

CHAPTER I, SECTION 1. ESTABLISHMENT

Section 1 establishes a bureau, to be known as the Plant Variety Protection Office, in the Department of Agriculture.

Those participating in the development of the proposed legislation examined at great length whether this bureau should be more properly in the Department of Commerce. Not without some remaining disagreement, it was concluded it should be placed in the Department of Agriculture primarily on the basis that the expertise found in this department would in any case be needed to determine the eligibility of candidate varieties.

CHAPTER I, SECTION 3. OFFICERS AND EMPLOYEES

Section 3 calls for the appointment of a Commissioner, an Assistant Commissioner and an appropriate staff. The Commissioner would be appointed by the Secretary of Agriculture. The Secretary is authorized to fix the compensation of each staff member at not in excess of the maximum scheduled rate provided for positions in Level V of Section 5316 of Title 5, United States Code.

This section was included as presumably necessary for establishing a suitable office for administering the Act. However, in conferring with technical experts of the Department of Agriculture we have learned that there is a belief that the organization of the Plant Variety Protection Office should be left more completely to the Secretary of Agriculture. This Association has no objection to deleting Section 3. It is observed that Section 1 contemplates an office devoted solely to administration of this Act, and that is deemed important for public confidence in the Office, lest there could appear to be some conflict of interest.

CHAPTER I, SECTION 7. PLANT VARIETY PROTECTION BOARD

A Plant Variety Protection Board will be established under the Act which will be made up of individuals competent to review applications with approximately one half its members being drawn from the government of public sector, which could include a seed-consuming farmer representative, and the other half from the private or seed industry sector, which could include a seed-producer farmer representative, all serving without compensation. The Board will be advisory in nature. Among its most important functions, it will advise the Commissioner on:

1. Adoption of the rules and regulations.
2. Appeals from the findings of the examiner, and
3. Whether and how a protected variety should be declared open to the public.

The make-up of the Plant Variety Protection Board will require careful study. In order to provide an insight into its thinking and, possibly, to serve as later guidelines, the American Seed Trade Association offers the following proposals:

1. The Board shall consist of 9 members: 4 from the seed industry, 4 from the public sector and the Commissioner who shall serve as Chairman.

2. The members shall be competent in the field of plant breeding and shall, insofar as possible, be selected in such a way as to collectively embrace knowledge of breeding of the overall array of species likely to be presented for Plant Variety Protection.

3. In cases where the Board questions its competence to fairly adjudge an appeal, the Board may elect to empower additional voting members, but only in the ratio of its industry-government make-up.

4. Since the Board is advisory, and its findings are therefore not binding on the Commissioner, the Commissioner shall neither vote nor inveigle, but, rather, shall assume the role of a hearing officer.

CHAPTER 3, SECTION 31. PLANT VARIETY PROTECTION ACT

The proposed basic fee for plant variety protection would be \$100 per application. This fee would, however, be increased by the cost of appeals, for extra copies of certificates, late filing and in several other ways, all of which could mean the average income per application would be close to \$175.

The American Seed Trade Association does not oppose the concept of establishing a schedule of fees, even though substantially higher than those proposed, which would place this agency on essentially the same footing as the U.S. Patent Office with regard to the relationship between income and expenses. We understand the Patent Office covers some 60% of its expenses with its income. It is questionable that plant breeders should assume a greater responsibility than this, however, since, because there are fewer plant breeders than industrial inventors, even a 60:40 ratio would result in a far higher cost per application than would be true of those for industrial patents or for asexual plant patents. And, in this connection, we feel obliged to point out that the higher fees called for in meeting the U.S. Patent Office ratio of expense to income tends to favor financially stronger breeders and discourage the small or amateur breeder or the breeding of crop varieties for which the sales potential may be small but the need critical.

In conference with government technical experts we find there is a view that the fees set are too low and should be left to the Secretary of Agriculture. The Association has no objection to this. The consideration of public interest previously mentioned can be considered by him.

CHAPTER 4, SECTION 42. RIGHT TO PLANT VARIETY PROTECTION; PLANT VARIETIES PROTECTABLE

This section states that any sexually reproduced plant may be protected (but calls attention to Section 45 which excludes fungi, bacteria and hybrids) unless the variety was found not novel. Specific examples of non-novelty are covered by sub-sections (a), (b), (c) and (d) of this section.

CHAPTER 4, SECTION 43. RECIPROCITY LIMITS

The essence of this section is that the protection afforded by this Act will be available to foreign breeders but (in the absence of treaty) only to the extent their respective countries offer legal protection to American plant breeders. "Breeders' Rights" laws of the different foreign countries contain certain exclusions with regard to species and certain benefits available only to "convention countries". It is the intention of the authors of this bill that these same exclusions would be applied to foreign applicants with the eventual hope that, in time, the reciprocity limits would be broadened or, hopefully, eliminated.

CHAPTER 4, SECTION 44. PUBLIC INTEREST IN WIDE USAGE

This section gives the Secretary the right to declare a protected variety open to public usage, for a period of two years, when he determines that such action is "necessary in order to insure an adequate supply of fiber, food or feed in this country and that the proprietor is not supplying the public needs at a price which may reasonably be deemed fair."

CHAPTER 5, SECTION 52. CONTENT OF APPLICATION

Section 52 lays down the basic provisions for the content of the application including the name of the variety and its description.

And, of great importance, this section and Section 81(d) require that the applicant deposit a viable sample of the basic seed necessary for the repropagation of the variety in a public repository. The basic purpose of this provision is to insure that the variety will continue to be available to the public even when it is no longer protected and whether or not the former proprietor continues to produce it.

CHAPTER 5, SECTION 56. CONFIDENTIAL STATUS OF APPLICATIONS

The contents of applications shall be kept in confidence by the Plant Variety Protection Office and by others who have access to such applications with certain noted exceptions. The Commissioner shall, however, be empowered to publish the kind and variety name stated in applications. The underlying purpose of this is to notify other potential applicants that certain names are thenceforth unavailable for their varieties.

CHAPTER 6, SECTION 61. EXAMINATION OF APPLICATION

This section provides for examination of applications, and issuing of a notice of allowance of plant variety protection. A question has been raised of the possibility of conflict with an application for plant patent. Although this possibility may be largely theoretical, this Association has no objection to an appropriate amendment. There could be an insertion after the comma in line 18 of page 22 reading, "and subject to conferring with the Patent Office as to possible conflict with an application filed by another person for a plant patent on the same variety." A related suggestion is mentioned in connection with Section 92.

CHAPTER 6, SECTION 62. NOTICE OF REFUSAL; RECONSIDERATION

This section provides for the refusal of applications; outlines the Commissioner's responsibility in such cases, and states the time applicant has for his response. The provision for an extra three months, by paying a small fee, primarily saves the Office from numerous time consuming petitions which would otherwise result. There are other provisions under which the Commissioner could avoid prolongation of prosecution.

CHAPTER 6, SECTION 63. INITIAL APPEAL

Upon refusal by the examiner the applicant may appeal to the Commissioner who, in turn, must seek the advice of the Plant Variety Protection Board on all appeals, before deciding the appeal.

CHAPTER 7, SECTION 71. APPEALS

This provides the applicant whose appeal has been rejected within the Plant Variety Protection Office to make further appeal under the Federal Rules of Appellate Procedure. The Court of Customs and Patent Appeals, without limitation to that court, is given jurisdiction.

CHAPTER 7, SECTION 72. CIVIL ACTION AGAINST COMMISSIONER

The applicant dissatisfied with the decision of the Commissioner under Sections 63 or 91 of the Act may, as an alternative to appeal, have remedy against the Commissioner in the U.S. District Court for the District of Columbia. This court may upon review adjudge that the applicant is entitled to a certificate of plant variety protection.

CHAPTER 7, SECTION 73. APPEAL ON CIVIL ACTION IN CONTESTED CASES

This section further provides the applicant with the right to civil action against another party in cases where the Commissioner adjudges two applications from two breeders are based on the same variety.

CHAPTER 8, SECTION 83. CONTENTS AND TERM OF PLANT VARIETY PROTECTION

This section describes the nature or content of the two forms of legal protection offered to applicant. The certificate of plant variety protection excludes others from selling the variety, or offering it for sale, or reproducing it, or importing it, or exporting it, or using it in producing a hybrid or different variety except as otherwise provided in the Act. The certificate conveys a *right* to the proprietor, which right he must ordinarily defend through appropriate civil action.

Section 83 also offers protection of the variety through certification and provides, in the United States, seed of the variety shall be sold only by variety name as a class of certified seed and, further, shall conform to the number of generations designated by the proprietor. This form of protection may be had in addition to that provided by the certificate of plant variety protection but not in lieu of it. As stated elsewhere, under interstate infringements on the protection offered by this certification, provisions would make available prosecution under the Federal Seed Act. The term of protection presently provided by the Act is seventeen years from the date of issue of the certificate regardless of kind or class of plant variety.

Finally, and in the public interest, this section provides that the proprietors must maintain a supply of viable seed in a public repository to assure the continued availability of the variety in case of abandonment by the proprietor or to serve as a means of making the variety publicly available upon the expiration of the proprietor's legal protection.

CHAPTER 9. SECTION 91. RE-EXAMINATION AFTER ISSUE

Section 91 provides that within five years after a certificate issues, anyone may submit to the Commissioner facts showing that the certificate should not have been issued. This is to minimize expensive litigation and to reduce the danger that invalid certificates would stand. Any danger of abuse or hardship to proprietors is minimized by repeated use of the word "may" which gives the Commissioner full discretion as to re-examination. Section (c), in providing that the Commissioner may permit the submitter of facts to offer testimony in proof of them, represent no intention that the submitter of facts will remain a party beyond the stage of providing the necessary proof.

CHAPTER 9, SECTION 92. PRIORITY CONTESTS

Section 92 provides for priority contests, although such contests are expected to be extremely rare. The Commissioner is given the widest possible discretion as to how such conflict will be handled, so that he can choose the best possible method according to varying circumstances, and may profit by experience.

Because the Association has encountered some concern with the theoretical possibility of conflict with a plant patent application, the following addition to Section 92 is offered:

(c) In case of a priority conflict between an application under this Act, certified or not, and an adversely owned plant patent for the same variety or an application therefor, the statutes governing each shall govern it irrespective of the other. However, no protection shall be available merely for determining that a variety already reproduced by another by one of the two ways (sexually or asexually) can be reproduced the other way. In the event of such conflict, if there should be valid protection under both statutes, each protection shall be confined to its own kind of reproduction.

CHAPTER 10, SECTION 102. OWNERSHIP DURING TESTING

The final evaluation of certain yield, quantity and processing characteristics of a new variety often requires production of the variety not under the direct control of the breeders. This section is intended to provide for the evaluation of the new variety, under notice, without jeopardizing the rights of ownership of the variety. This provision protects the breeder from the unscrupulous individual who may obtain seed during testing and provides that the rights of the lawful owner will not be lost.

The rights of a breeder who may be confronted with loss of a variety in these testing phases, and a dishonest attempt to protect this variety, is further protected by the five year period during which an issued certificate may be re-examined.

CHAPTER 11, SECTION 111. INFRINGEMENT OF PLANT VARIETY PROTECTION

Section 111, defines infringement quite broadly, but is all subject to the opening words "Except as otherwise provided." This refers especially to important exemptions found in Sections 112 to 116.

CHAPTER 11, SECTION 112. RIGHT TO SAVE SEED

It is not the intent of this legislation to prevent a farmer from saving seed for growing a following crop. This section assures farmers that right. He cannot, however, as brought out in Section 111, sell seed from his production or use it in producing (as distinguished from developing) a hybrid or different variety, without the authority of the owner of the variety.

CHAPTER 11, SECTION 115. RESEARCH EXEMPTION

Since the philosophy of the bill is, in part, to assure the farmers of a continuous source of improved varieties, it is not the intent of the bill to prevent the use of the germ plasm of a protected variety for plant breeding or other bona fide research. This section assures the research worker the privilege of transferring genetic characteristics from a protected variety without being held responsible for infringement of the protection provided the original breeder.

CHAPTER 12, SECTIONS 121 TO 126

Section 121 provides the essential remedy by civil action in case of infringement; and the following sections are mainly necessary collateral provisions for defenses, in junctions, damages, recovery of attorneys' fees in exceptional cases (such as lack of good faith), and a "statute of limitations."

CHAPTER 12, SECTIONS 127 AND 128. FALSE MARKING; LIMITATION ON DAMAGES; MARKING AND NOTICE

Section 127, in addition to usual provisions for using the notation "U.S. Protected-Variety," encourages distribution of a valuable new variety before a certificate has (been) issued by permitting honest use of the words "Propagation Prohibited." Various safeguards are found in Section 128.

CHAPTER 13, SECTIONS 131 AND 132. INTENT, SEVERABILITY

Sections 131 and 132 provide maximum certainty of constitutionality whether under the "authors and inventors" clause or the "commerce" clause.

CHAPTER 14, SECTION 141. EFFECTIVE DATE

By providing that the Act takes effect upon enactment, unnecessary delay in achieving its benefits for agriculture and the public is avoided.

CHAPTER 14, SECTION 142. AMENDMENT OF FEDERAL SEED ACT

This is the language necessary to implement the optional provision providing for the limitation of sale of seed by variety name only as a class of certified seed as provided in Section 83. With the enactment of the Plant Variety Protection Bill, Section 142 will become Title V of the Federal Seed Act.

CHAPTER 14, SECTION 143. AMENDMENT OF JUDICIAL CODE

This section merely coordinates the Judicial Code provisions for the United States Court of Customs and Patent Appeals with appeal provisions of this Act.

VI—SOME OPPOSITIONAL VIEWS AND SUMMARY

This Committee will almost certainly be hearing some views opposing the proposed legislation in whole or part. We should like to comment briefly on some of the more common of these objections.

First, the objection: "The bill would create a breeders monopoly and result in higher prices for seed."

It must be observed that, today, breeders have two forms of varietal protection available to them: the Patent Act offering legal protection for a sexually-produced plant varieties and, secondly, biologic protection arising from the utilization of hybridizing techniques.

Most rose varieties offered today are patented. These rose plants are normally reproduced not only by the developer but by others. And they are sold by sales outlets of all kinds including discount stores of one kind or another. The breeder cannot and does not determine the price, the natural result of which, of course, is that prices for a given variety vary widely. The purchaser may choose the price he is willing to pay. An examination of the rose industry will disclose as a result, and despite its ability to legally protect its product, the rose industry is a highly competitive industry no more profitable than most and less profitable than many.

The hybrid corn industry deals in a biologically protected product. A survey of 1970 prices for hybrid seed corn of the same genetic class and kernel grade, shows a difference of about 17% between the published high and low prices of some of the major companies. If other inducements, such as discounts, prizes and incentives, are considered, the spread becomes even greater. And, it is not uncommon to see price differences of up to 50%.

On the basis of these examples and others which could be enumerated, we in the American Seed Trade Association see no justification for the fears that the enactment of this bill into law would result in either a breeder monopoly or in higher farmer prices.

Second, the objection: "The bill would interfere with the free flow of germ plasm."

The concern here seems to stem from the belief that public breeders would retain their valuable breeding materials in the hope of financial gain and that this would slow the overall pace of varietal development. Whether this happens or not will be determined by the policy of the individual experiment station. We do not believe the enactment of this bill into law would materially alter present experiment station policy. We base this conviction largely on the basis of the fact that it has not happened in the case of hybrid corn and hybrid sorghum, for example, even though with these and other hybrid crops, the public breeder has a biological protection mechanism available to him which, by any evaluation, must be considered as even more certain and theft-proof than legal protection.

Thirdly, one group, the Washington Wheat Commission, has expressed a concern that: "The Plant Variety Protection Act would result in the release of wheat varieties which could threaten the quality of the Northwestern wheat crop."

Representatives from the American Seed Trade Association met with the Commission and others to explain that this objection was in no way linked to the Plant Variety Protection Act. Wheat varieties will be bred for and released in this region whether or not the proposed law is enacted. We propose, that if this concern is considered a valid one, that the Washington Wheat Commission sponsor legislation in the State Legislature which would require that any new wheat variety must meet certain predetermined quality standards before sale would be permitted in that state. Such a law, obviously, would act to prevent the sale of both protected and non-protected varieties of wheat—a possibility that would not be available through the amendment of the proposed Plant Variety Protection Act.

And, finally, there has been the objection: "The Plant Variety Protection Act would not be self-financing."

In framing the proposed Act, we in the American Seed Trade Association took the view that the Act should be essentially self-financed.

In summary, we in the American Seed Trade Association believe that the enactment of the proposed Plant Variety Protection Act into law will bestow important benefits on American Agriculture among which the following are the more important:

1. It will greatly stimulate private plant breeding.
2. It will allow our government agricultural experiment stations to increase their efforts on needed basic research.
3. It would permit public expenditures for applied plant breeding to be deviated to important areas which industry may not pursue.
4. It will give farmers and gardeners more choice, and varieties which are better in yield or in quality, etc.
5. It will make American agricultural products more competitive in world markets.
6. Consumers and other purchasers of crops will benefit: in some instances by improved quality, in others by aiding the production needed to serve them.

The authority for establishing the financing provisions of this law have not been dealt with by ASTA.

Senator JORDAN. You may proceed as you wish.

Mr. WHITE. Thank you.

In addition to offering the complete testimony, I would like to make a few brief remarks on behalf of the bill.

The American Seed Trade Association represents over 450 seed companies, 41 State and regional associations, and, we believe, the seed industry at large. The association headquarters are located in the Executive Building, 1030 15th Street NW., Washington, D.C.

The American Seed Trade Association strongly supports S. 3070, and related bills, sometimes called the Plant Variety Protection Act, because of a profound belief that this legislation will benefit not only plant breeders but will bestow even greater benefits on American agriculture and the community at large. In the following testimony, we shall attempt to provide the substance for this belief—the testimony which has been submitted for inclusion in the record, but I would like to point out that the American Seed Trade Association has worked on this legislation for 10 years now, during the

course of which we have examined and considered the various forms of legal protection available to us, including those presently in force in Europe, the U.S. patent law, and our own Federal Seed Act.

In the course of our studies, we have also consulted all interested groups to make sure of the legal soundness of our proposal and to make sure that it properly reflects the interests and concerns of all, paying particular attention to the public interest. At the present time, we know of no opposition to the principle of legal protection for plant varieties.

Now, Mr. Chairman, I would like to take just a moment to say a few things about the nature of the law we are proposing.

In the brief time allotted, I cannot and do not intend to give a section-by-section review, but I would like to offer a digest in the words of a legal layman which I hope will convey the substance of our proposal.

First of all, the bill would make it possible to legally protect plant varieties that cannot be protected either under the patent law or through hybridization. These plant varieties encompass or involve the most important crops of this land.

The law would allow the plant breeder to protect his variety in a manner rather similar to that obtaining in the case of industrial patents. But there would be some important differences.

For one thing, the law would oblige the proprietor to make his product available through compulsory licensing in the case of national emergency. It would allow farmers to reproduce the product for their own use, and it would absolve people who sell the product for food or feed of any infringement.

The proposed law offers applicants two modes of protection: a right something akin to a patent right which they would defend at their own expense against infringement, and, secondly, the option of further protecting their variety through seed certification, in which case infringers would be prosecuted under the Federal Seed Act.

The law would contain many safeguards to protect the breeder, both public and private, during the developmental stages of the variety. As noted, it contains many provisions to protect the public interests and, perhaps no less important, the overall effect of its provisions is one offering an inducement to and putting a responsibility on the private plant breeder to develop and market the superior plant varieties needed to keep our agriculture both vital and competitive.

That concludes my statement, Mr. Chairman.

Senator JORDAN. Thank you very much.

Senator MILLER?

Senator MILLER. I have no questions.

Senator JORDAN. I do not see anything in this bill that would be detrimental to anybody, if the farmer can use his own seeds that he uses this year to plant his own crop next year. That is customary with all farmers and has been, I presume, as long as people have been farming.

Mr. WHITE. That is true.

Senator JORDAN. Any time he is going to provide a seed for use on his own land, I think he should be protected for the use of that seed. I think it is a good bill all the way around.

Mr. WHITE. We agree, Mr. Chairman.

Thank you.

(Supplemental statement filed for the record is as follows:)

Washington, D.C., June 12, 1970.

Hon. B. EVERETT JORDAN,
*Chairman, Subcommittee on Agricultural Research and General Legislation, Senate
Agricultural Committee Washington, D.C.*

DEAR MR. CHAIRMAN: The American Seed Trade Association wishes to request the additional statement in support of S. 3070 be included in the Hearing record of June 11, 1970:

The American Seed Trade Association respectfully offers the following refutations to the views presented by Mr. Eldrow Reeves, of the Campbell Soup Company, before the Senate Subcommittee on Agricultural Research and General Legislation.

We should like to point out, first, that the Plant Variety Protection Act is voluntary. The Campbell Soup Company, or anyone else foreseeing the evils alleged by Mr. Reeves, may avoid them by not availing themselves of the protection afforded by this law.

Mr. Reeves contends that the bill "would essentially eliminate exchange of valuable germplasm and severely curtail the development of new varieties."

The American Seed Trade Association believes this argument is refuted by two facts:

(1) This has not occurred in the case of hybrids where biological protection has been available, and, indeed, despite the availability of the protection mechanism, there has been a free flow of germplasm and information from public institutions.

(2) The endorsement of the state agricultural experiment stations carries with it the inherent conviction that this valuable exchange of genetic material and knowledge will not occur.

Mr. Reeves then contends that the Act would be difficult if not impossible to administer. He seems to suggest that varietal novelty cannot be established. In refutation of this argument we wish to point out that:

(1) The USDA Agricultural Research Service believes otherwise. This is inherent in their testimony in support of the Act;

(2) The state agricultural experiment stations believe otherwise as indicated by their supporting testimony;

(3) The fact that similar systems of legal protection have been in operation for many years in some European countries offers working proof in refutation of this argument, and finally;

(4) The Federal Seed Act, which is a truth-in-labeling law, passed by Congress August, 1939, is based upon the fact that varietal identification can be established.

Mr. Reeves then contends that cost of application and litigation would be exorbitant.

The American Seed Trade Association and others have projected the direct out-of-pocket costs connected with the administration of this Act and its membership is convinced these costs are not, or need not be, exorbitant.

Litigation costs are optional just as they are with industrial patents. The patent owner decides whether his patent is worth the cost of defending it. Long time experience indicates that industrial patent owners do not find litigation costs so great as to deter them from obtaining the protection offered by such patents and there is every reason to believe that those holding certificates of Plant Variety Protection would make a similar evaluation.

Finally, Mr. Reeves contends that the seed certification and the development of F₁ hybrids offers enough protection to encourage creativity.

This argument is refuted by the fact that:

(1) The Association of Official Seed Certifying Agencies, the agency offering the certification protection alluded to, feels strongly otherwise, and;

(2) Finally, the well-known genetic fact that many of our crops, including some of our most important, do not lend themselves to hybridization.

We appreciate the opportunity of submitting this additional statement.

Very truly yours,

JOHN I. SUTHERLAND,
*Executive Vice President,
American Seed Trade Association.*

Senator JORDAN. Mr. Rogers—John S. Rogers, Secretary-Treasurer, National Council of Commercial Plant Breeders, Orange, Conn.

STATEMENT OF JOHN S. ROGERS, SECRETARY-TREASURER, NATIONAL COUNCIL OF COMMERCIAL PLANT BREEDERS, ORANGE, CONN.

Mr. ROGERS. Mr. Chairman, my name is John S. Rogers, I am speaking on behalf of the National Council of Commercial Plant Breeders, in support of S. 3070, which is a bill to provide plant variety protection.

I have served as president of this organization a number of years, and my present employment is as director of research for the Asgrow Seed Co. which has its headquarters in Orange, Conn., and whose primary purpose is development and production and distribution of field seeds for both the domestic and international markets.

We have a prepared statement which I would appreciate having included in the record.

Senator JORDAN. It will be included in its entirety.

(The prepared statement of Mr. Rogers is as follows:)

Mr. Chairman, my name is John S. Rogers. I am speaking on behalf of the National Council of Commercial Plant Breeders in support of S. 3070, which is a Bill to provide Plant Variety Protection.

I served as President of NCCPB during 1962-63, and have been the Secretary-Treasurer of this organization since that time.

My present employment is as Director of Research for the Asgrow Seed Company, which has its headquarters in Orange, Conn. Our primary business is the development, production and distribution of vegetable and agronomic seeds in both the domestic and international markets. Our company has been a member of NCCPB since its beginning and strongly supports the NCCPB's position on this legislation.

The National Council of Commercial Plant Breeders was founded in Memphis, Tennessee in 1954 to represent the interests of private American plant breeders at home and abroad, to promote cooperation and understanding between public and private plant breeders, and to encourage the development of high professional and ethical standards in American private plant breeding.

Since our beginning in 1954, we have grown to a membership of more than 40 firms, representing a major part of the private plant breeding being conducted in the United States. A recent survey shows that member firms employ over 300 professional workers, which include 100 Ph. D. scientists and an equal number of M.S. degree personnel. Over 10 million dollars is expended annually by member firms in their research programs.

Private plant breeding has enjoyed significant growth during the past two decades, particularly in crops such as corn, sorghum, alfalfa, wheat, cotton, and certain vegetable species, where technological developments giving natural protection have made recovery of research expenses and profits possible.

A most significant accomplishment of NCCPB has been to bring together into one organization most commercial plant breeding interests in the United States. Through this association of representatives working in many diverse crops, it has been possible to review common opportunities and problems and to establish common goals and ethical standards for commercial plant breeders.

A major objective since the inception of the Council has been the development of a system of voluntary plant variety protection for the private developer, or inventor, of plant improvements, in order that said developer can capitalize on his improvement if he wishes and have incentive to develop further improvements. It is the conviction of the NCCPB that developers (inventors) of plant improvements are entitled to the same kind of voluntary protection that is available to inventors in other fields.

During the past few years the major activity of NCCPB has been to work cooperatively with American Seed Trade Association to achieve legislation providing appropriate protection for individuals or firms engaged in plant breeding. In developing potential legislative approaches for plant variety protection, both NCCPB and ASTA have worked closely with appropriate personnel from the U.S. Department of Agriculture and the Land Grant Universities. Considerable time and effort have been devoted to this objective of plant variety protection

for the past few years, and there has been a conscious and continuing effort to consider all possible interest in the development of any legislation.

The present Plant Variety Protection Act, represents the culmination of these several years of effort by the various organizations and personnel involved. We sincerely believe that the proposed bill represents both an equitable and practical approach to the subject of plant variety protection, as well as providing an incentive for the developer and the opportunity for public benefit.

I will not go into detail on the various sections of the Bill, but I would like to make three specific statements which I believe provide the primary basis for justification of this particular legislation:

1. Developers of plant improvements are entitled to the type of voluntary protection that is now available to inventors in other fields. In this legislation, what we are asking for basically is the right of ownership to the product developed by the plant breeder. Considerable investment in time and money is required for the development of varieties, and it appears only equitable that the organization or individual developing the variety should be entitled to the rights of ownership. The present Bill provides this right to the developer, or owner.

2. Through plant variety protection, which permits ownership of the variety by the developing firm or organization, considerable stimulus should be provided for investment in further plant breeding efforts. Significant investment is now made in both the private and public area for plant breeding, and the contributions from these research efforts have truly been outstanding in the terms of new and improved varieties.

Progress in the hybrid crops such as corn, sorghum, onion, cucumber, and cabbage has been particularly significant where the technological developments permit recovery of research expenses and the possibility of profits. The degree of private investment in corn and sorghum research during the past few decades is ample testimony to the fact that considerable investment will be made where (due to some form of protection) profitable opportunities exist in plant breeding. With the enactment of a Plant Variety Protection Act, we can expect additional private investment in plant breeding programs for all important crops.

3. Significant public benefits will result from the enactment of a plant Variety Protection Act which stimulates development of new and improved varieties. Technically speaking, there is ample evidence that significant improvements can be made in any crop species where adequate investments are made for plant variety improvement. The main restriction to date has been the amount of investment being made in the field of plant breeding, whether private or public.

A stimulus to private investment in plant breeding through a Plant Variety Protection Act is certain to result in the development of improved varieties in many of our important crops. For example, crops such as soybeans, wheat, cotton, rice, and many others would represent greatly improved opportunities for private investment with an adequate Plant Variety Protection Act.

We are presently witnessing a dramatic breakthrough in plant breeding in the "Green Revolution" taking place in many of the developing nations of the world. This progress has been primarily possible through the development of improved cereal varieties which are much more productive. The development of better yielding varieties of all food and feed crops is especially significant at this period of history when population in many areas is surpassing our ability to produce food.

I would like to close my statement on a personal note. It has been my privilege to be engaged in either plant breeding or plant breeding administration for more than 30 years. During this time I have spent approximately one-half of my career in the public service, while the remainder, and more recent years, have been devoted to private plant breeding. On the basis of my experience, I would like to emphasize that plant breeding does provide a rewarding and meaningful career, and I have indeed appreciated the opportunity of working in this field for such a period of years.

As a result of this experience, it is certainly my personal conviction that plant breeding has made and can continue to make significant contributions both domestically and internationally. I also firmly believe that enactment of the Plant Variety Protection Act will encourage investment in and, therefore, accelerate progress in the field of plant breeding.

We have the opportunity, therefore, through enactment of this legislation to ensure the development of improved varieties which will, in turn, contribute to the public welfare through their usage.

Mr. ROGERS. Thank you, sir. I shall comment very briefly.
 Senator JORDAN. You may proceed.

Mr. ROGERS. Just a word about the National Council of Commercial Plant Breeders.

This is an organization that was founded in 1954 to represent the interests of private plant breeders in the United States. We have grown now to having over 40 members who, we believe, represent the major part of the private plant breeding activities that are conducted in the United States.

So, we believe we do speak for this group.

During the last several years, our primary activity has been to work cooperatively with the American Seed Trade Association toward the achievement of some type of legislation that would provide plant variety protection for the individual or firm developing new varieties. This bill which is being considered represents the culmination of these several years of activity, and we believe provides an equitable and practical approach to this matter of plant variety protection.

I would like to just mention three objectives which we believe will be achieved by this particular bill and which we believe are in the interests of all.

The first is that the bill will provide protection to the individual or firm developing a new variety. That is the basis of it.

Secondly, we are confident that a considerable investment will be stimulated in the field of plant breeding as a result of the incentive offered through the plant variety protection system.

And, third, we are also quite confident that as a result of this additional investment in plant breeding, new and improved varieties will be developed which will be a benefit to the producer of crops and certainly also, then, to the general public, because they have the opportunity to benefit from these improved products.

I believe this completes our testimony.

And I thank you very much, sir.

Senator JORDAN. Of course, it is a known fact that if a farmer can raise twice as much on an acre of ground with a new seed as he did with the old seed the public will benefit, because he can sell it cheaper as he produces it cheaper. The ultimate consumer is going to benefit greatly from this act, as I see it, along with the protection it will give to the man who produces the new seed. It does not make much sense for a man to work several years—because sometimes it takes that long to develop a new seed or variety—and then have somebody else take it next year and plant the new seed. Now they can do that. This bill will protect the developer of that new seed.

Mr. ROGERS. Yes, sir.

Thank you very much.

Senator JORDAN. Thank you very much.

The next witness is Mr. McKenna, senior vice president, Ferry-Morse Seed Co.

**STATEMENT OF RICHARD W. McKENNA, SENIOR VICE PRESIDENT,
FERRY-MORSE SEED CO., MOUNT VIEW, CALIF.**

Mr. McKENNA. Mr. Chairman, my name is Richard W. McKenna. I am the senior vice president of Ferry-Morse Seed Co., a wholly-owned subsidiary of Purex Corp., Ltd., a California corporation.

I have prepared a statement concerning this legislation. However, in the interest of your time this morning, and with your permission, I would like to ask to have it incorporated in the record.

Senator JORDAN. It will be carried in the record in its entirety.

You may discuss any point of it you like, briefly.

Mr. McKENNA. Thank you.

(The prepared statement of Mr. McKenna is as follows:)

Mr. Chairman and committee members, my name is Richard W. McKenna. I am the Senior Vice President of Ferry-Morse Seed Company, a wholly owned subsidiary of Purex Corporation, Ltd., a California Corporation.

Our Company develops, produces and merchandises vegetable, field and flower seeds for national and international distribution. In our research, we are primarily concerned in increasing productivity and quality of product.

I am interested in the passage of a Plant Protection Act that provides for voluntary participation by the originator. I refer in particular to S. 3070.

Speaking on behalf of the American Seed Trade Association, and also speaking for our Company, I strongly support the Plant Variety Protection Act which is being recommended by the membership of the Association and many other agricultural groups. It is my considered opinion that developers of plants requiring sexual reproduction for maintenance should have the encouragement of the opportunity from their efforts in a manner similar to that granted to developers of products covered under the Patent Act. There are at the present time many important areas that we cannot justify expenditures in Research and Development because of lack of legal protection. It is our intention to materially increase expenditures in Research, provided protection is made available to the seed breeder.

The governments of several European countries, in particular West Germany, Holland, Austria, Denmark, England and France, have already seen the need for and have made available in their respective countries a form of plant variety protection to developers of sexually reproduced plants.

It is my opinion that S. 3070 would provide an effective and equitable system. It would be voluntary and protection would be based on novelty, distinctness, uniformity, and stability of the variety. It places responsibility for the defense of the protection granted on the owner of the rights, at his expense. The system would be available to any originator or developer of a new sexually reproduced plant variety. It would not interfere with the free-flow of information and breeding materials among plant scientists and it would allow any farmer the right to reproduce seed for his own planting.

We are just now beginning in agricultural research to unlock and understand some of the mysteries of plant life. We must exploit new discoveries as rapidly as they become known in order to establish unique and more stable germ plasm in the form of superior and novel varieties.

Applied agricultural research must be encouraged and expanded, particularly in the private sector, if the economy of our country is to reach its full potential. There is no question in my mind but that a Plant Protection Act will stimulate greatly increased activity and investment by business in the research needed for better food products. Such activities by private enterprise will enable government to apply its agricultural research expenditures to the best possible use with concentration in much needed basic research.

I am confident that a Plant Protection Act will encourage a more open exchange of germ plasm between public and private researchers. Certainly, there must be a close and unselfish rapport between all scientists if we are to succeed in reaching mutual goals which are of benefit to the public.

Your favorable action on S. 3070 will be greatly appreciated.

Mr. Chairman, I do appreciate having the opportunity to present my views on this important matter.

Mr. McKENNA. Well, speaking as the president of the American Seed Trade Association, and also speaking for our company, I strongly support the Plant Variety Protection Act, which is being recommended by the membership of the association and many other agriculture groups.

In my opinion, S. 3070 would provide an effective and equitable system. It would be voluntary, and protection would be based on novelty, distinctness, uniformity, and stability of the variety.

It further places responsibility for the defense of the protection granted on the owner of the rights and at his expense.

The system would be available to any originator or developer of a new sexually reproduced plant variety.

It certainly would not interfere with the free flow of information and breeding materials among plant scientists and, furthermore, it would allow any farmer to reproduce seed for his own planting.

I would certainly be—and am—in support of this legislation, and your favorable action would be gratefully appreciated.

Senator JORDAN. Thank you very much. We appreciate your being with us. Your statement will be carried in the record in its entirety, as I have said.

Mr. Loden, director of research, ACCO Seed, division of Anderson, Clayton & Co., Belmond, Iowa.

**STATEMENT OF DR. HAROLD D. LODEN, DIRECTOR OF RESEARCH,
ACCO SEED, DIVISION OF ANDERSON, CLAYTON & CO., BELMOND,
IOWA**

Mr. LODEN. Thank you, Mr. Chairman.

My name is Harold Loden, and I have prepared a statement which has been presented to the clerk, and I would like to ask that it be inserted in the record.

Senator JORDAN. It will be inserted in the record.

Mr. LODEN. I would like to add one point to the statement Senator Miller made. This is a consumer bill, and the main recipients of the advantages of the bill will be the American farmer, American agriculture, and consumers of the American farmers' products.

Senator JORDAN. I thoroughly agree with that statement.

Mr. LODEN. Thank you, sir.

(The prepared statement of Dr. Loden is as follows:)

Mr. Chairman, my name is Harold D. Loden and I am Director of Research, ACCO Seed, Division of Anderson, Clayton and Company, Belmond, Iowa. Our company develops, produces and distributes proprietary corn and sorghum hybrids and proprietary cotton varieties.

We strongly support S. 3070, and related bills, which would provide legal protection for the developers of new sexually reproduced plant varieties.

This proposed legislation may appear to be designed to improve the lot of the commercial plant breeder, however, we state without fear of contradiction that the real recipient of the benefits inherent in this legislation will be the American farmer and indirectly the consumer of the products of American agriculture.

S. 3070 will provide a basis of protection to the developer of new sexually reproduced plant varieties and further establish the incentive for increased effort in plant variety development by creating the possibility of recovering funds expended for plant breeding research. New plant varieties are of no value to the developer unless he can profitably produce and sell them, his only market is the farmer who in turn is motivated to buy a new variety because he expects increased profit to result from its use. We must accept the fact that legislation providing plant variety protection will afford benefits, not only to the farmer who buys planting seed, but also to the agri-business economy into which the products of the farmer must ultimately be sold and consumed.

A look at the commercial plant breeding firms presently maintaining research programs for the development of field crop varieties shows it to be dominated by firms producing hybrid seed. Crops in which practical first generation hybrids

can be produced have "built-in genetic variety protection". It is obvious that a workable form of variety protection is available to developers of hybrid varieties in which the breeder retains control of the parental seedstocks. This built-in genetic basis for variety protection has provided the necessary economic base and incentive for investment of private funds in development of hybrid varieties.

Commodity groups have recognized the value of variety protection in improving not only the per acre production but also product quality. During the last session of the Texas Legislature, a bill was passed requiring use of the certification tag as proof of varietal identity of varieties accepted for certification when such seed are sold in trade channels. This legislation provides the basic mechanism for protection of developers of cotton varieties accepted for certification in Texas. The basic reason for passage of this legislation was the inherent improvement of the quality of the Texas cotton crop which will result from use of genetically pure planting seed.

It is not necessary to dwell at length on the contribution of the hybrid corn and hybrid sorghum industries to the agricultural economy of the United States. Available statistics on increased per acre yields, and therefore farm income, prove without a doubt that the major beneficiaries of the developments of commercial hybrids of corn and sorghum have been, and will continue to be, the American farmer and the consumer of the products he produces in increasing quantities and at continually lower per unit costs. The vast majority of today's corn and sorghum hybrids are the result of investment of private funds in variety development research. The hybrid field seed industry has shown the capacity and willingness of the seed industry to invest corporate funds for applied research when recovery of funds invested and reasonable profits can be expected because of built-in genetic protection.

I recently made a survey of seed firms having research programs for the development of proprietary field crop varieties to determine if they would expand their research program to include soybeans when a legal system of plant variety protection was available. Soybean varieties, with few exceptions, have traditionally been developed by public funds; one of the compelling reasons being that as a self-pollinated crop the "right" to a soybean variety is lost upon first sale of seed of a new variety. The survey showed that all firms having production and research facilities in soybean producing areas would initiate soybean variety development programs, or expand present efforts, when variety protection becomes a reality. This survey proved without a doubt that legal variety protection will result in a tremendous increase in private research effort directed toward soybean variety development, the benefits of which will accrue directly to the soybean farmer and the American soybean economy.

I would like to illustrate the "other-side-of-the-coin" in research for soybean variety development by an experience of our company. About 20 years ago we initiated a program designed to encourage soybean production in West Texas. One phase of our effort was directed toward variety development. After more than 10 years of breeding research, we donated all of our soybean breeding stocks and records to the High Plains Research Foundation, a private research institution supported by voluntary contributions. This was done since we recognized that without variety protection, continued investment in this phase of our research program could not be expected to return a profit.

The current interest of private research organizations in wheat breeding research provides a dramatic example the willingness of private firms to invest funds in variety development with a reasonable possibility of obtaining a profitable return. Until a few years ago only two private firms in the United States maintained significant wheat breeding programs. The developments which have made wheat hybrids a possibility, even though not yet a proven practical reality, have resulted in at least twelve private firms employing more than thirty professional researchers in wheat breeding programs. This increase in research efforts for wheat variety development could have been generated by legal variety protection as well as by the possibility of having built-in genetic protection. The primary beneficiary of this additional research, supported by non-tax funds, will be the American wheat producer.

The passage of S. 3070 will offer benefits and opportunities for the small seedsmen to probably a greater degree than to larger firms. Many small breeding firms are engaged in the development of varieties of very specialized crops with relatively small sales volume; examples are petunias, tomatoes and other floral and horticultural crops. In these specialized areas of variety development expenditures for research will usually represent a larger percentage of the sales dollar

than for large volume field seed crop varieties. Another example of the type of benefits afforded the small seedsman would be the availability of protection to those individuals who make significant discoveries of new crop varieties such as combine type grain sorghum by W. P. Martin or the original stormproof stripper cotton variety by H. A. Macha. These two men are examples of the many who have advanced American agriculture in the introduction of significantly improved crop varieties—who, due to lack of variety protection, were not adequately rewarded for their contributions. The existence of more than 300 small specialized seed breeding firms in Germany, which has a system for variety protection, is considered indicative of the type of growth of small seed breeding companies we could experience in the United States with the passage of S. 3070.

The absence of any form of legal protection for the originators of new plant varieties which reproduce sexually has forced many companies to forego comprehensive research programs, this is particularly true for those firms who are engaged primarily in the production and distribution of crops in which production of first-generation hybrids is either not possible or practical. The enactment of legislation providing for plant variety protection would result in the initiation of private research programs for the entire spectrum of crop varieties . . . the missing link to significantly increased efforts in plant variety development is a system of legal protection such as sought by S. 3070.

Our firm, as a member of the private plant breeding industry, feels that the passage of S. 3070 will provide a method for the continued expansion of the free enterprise system and that an unbridled and protected plant breeding industry could make major contributions to agriculture, not only in the United States, but also aid in our Nation's commitments to aid in feeding and clothing the underdeveloped nations of the world. We look forward with anticipation to the opportunity of participating in the new, exciting, and competitive plant breeding efforts such legislation will generate. We are convinced that the additional investment and competition generated by S. 3070 will serve the best interests of American farmers, and of greater importance it will be in the general public interest and will strengthen our total agricultural economy.

We urge passage of S. 3070, and appreciate the opportunity to present our views on this very important matter.

Senator JORDAN. Mr. Babcock, please.

STATEMENT OF GEORGE B. BABCOCK, MANAGER, GROWER SEED ASSOCIATION, LUBBOCK, TEX.

Mr. BABCOCK. Mr. Chairman, my name is George Babcock. I am general manager, Growers Seed Association in Lubbock, Tex.

Growers Seed is a regional federated cooperative with a membership of 179 cooperatives located primarily in west Texas, southwestern Oklahoma and eastern New Mexico.

Our association develops and produces cotton planting seed and hybrid grain and forage sorghum seed for distribution to our membership.

Our board of directors has endorsed and supports S. 3070. This endorsement has come after careful consideration and evaluation of the bill. For purposes of pointing out the significance of this board decision, I would like to call your attention to the organization and structure of our board. Each of our member cooperatives names a representative to serve on our board of directors. Presently, our board is composed of 179 men representing a like number of local communities. The combined number of cotton and sorghum farmers who own and direct these local cooperatives is conservatively estimated at approximately 25,000.

There was recent passage by the Texas Legislature of a bill offering protection to the developers of cotton varieties in Texas. Our association opposed the first attempt at passage of this bill. The bill offered

the plant breeder "Breeder's Rights," but in our opinion omitted "Farmer's Rights." We believe that S. 3070 in section 112, guarantees adequate protection for farmers. This section allows farmers the right to save seed for their own use.

Another concern of our association, and one which has been carefully considered, was whether some seed companies who have large sums of capital available for research would be willing to enter into royalty-bearing contracts with cooperative or smaller seed companies for the right of reproduction of their privately developed varieties. Our feeling, after discussing this particular point with several companies, and after actually entering into contract with two companies, is that no company, no matter how large, will be able to supply all the planting seed requirements of American farmers.

Section 212 becomes important here in that it offers farmers the means to directly influence the decisions and practices of seed companies in the allocation and distribution of the supply of seed of non-hybrid varieties. If the developer of a variety is not willing to make available its variety in adequate supply and at a reasonable price, the farmer can increase seed of the variety for his own use. We believe that all developers of varieties will be willing to cooperate on a reasonable basis with others to insure that an adequate seed supply is available to meet demands of farmers.

Many cooperatives and small seed companies have relied on the public research agencies to develop and release advanced breeding material and new plant varieties. S. 3070, in section 115, provides for a research exemption, whereby the use and the reproduction of a protected variety for plant breeding or other bona fide research shall not constitute an infringement of the protection provided under the bill.

Most public agricultural experiment stations operate on a limited budget. In our opinion, S. 3070 will provide the mechanism for the public research agencies to increase their income and thereby make available additional funds for an accelerated plant variety research program. This can be accomplished by the agricultural experiment stations offering their new varieties for sale and/or entering into royalty-bearing contracts with seed companies for the right of reproduction and sale of seed of protected varieties developed by these public agencies.

I will be the first to admit that commercial plant breeding companies will greatly benefit from the protection afforded by the passage of S. 3070. I would like to point out, however, that farmers and the public at large stand to gain much more as a result of increased yields and lower per unit costs.

Next to the soil, seed is the foundation of American agriculture. Farmers that own our association recognize the importance of applied research in the development of new varieties. Applied research for variety development is a slow and costly process. An organization engaged in variety development is entitled to a fair return on its research investment. If America is to continue to be the agricultural leader of the world, more must be done by both the private and the public sector in developing new and better crop varieties.

Mr. Chairman, I will be happy to respond to any question which you or any member of the committee may have.

Senator JORDAN. Thank you very much.

I have no questions. You have a fine statement. We are glad to have you with us.

Mr. BABCOCK. Thank you, sir.

I appreciate the time you have given me.

Senator JORDAN. Mr. Neely.

**STATEMENT OF DR. J. W. NEELY, VICE PRESIDENT, COKER'S
PEDIGREED SEED CO., HARTSVILLE, S.C.**

Mr. NEELY. Good morning, Mr. Chairman.

Senator JORDAN. Mr. Neely is Vice President of Coker's Pedigreed Seed Co. of Hartsville, S.C., one of my neighbors.

We are glad to have you with us this morning.

Mr. NEELY. Thank you, Mr. Chairman.

We have a prepared statement which I would like to file.

I would like to repeat, as you have stated, that I am vice president of Coker's Pedigreed Seed Co. My company has been the breeder of varieties of several southern field crops for 68 years. We strongly support S. 3070 and related bills.

Thank you very much, sir, for the privilege of appearing before the committee and presenting this statement.

Senator JORDAN. Thank you, sir. We appreciate your statement and it will appear in its entirety in the record.

Please tell all of the Cokers "Howdy," for me.

Mr. NEELY. I certainly will.

(The prepared statement of Dr. Neely is as follows:)

Mr. Chairman and committee members, my name is J. W. Neely. I am Vice President of Coker's Pedigreed Seed Company of Hartsville, South Carolina.

My Company has been the breeder of varieties of several Southern field crops for 68 years. We strongly support the bill S. 3070.

One of these crops is soybeans. Over a period of 4 years we have spent several hundreds of thousands of dollars to develop a variety, Hampton 266, that is now being widely grown in the Southeastern United States. At least 83% of the soybean acreage of South Carolina is planted in this variety, according to a report of the South Carolina Crop and Livestock Reporting Service of the United States Department of Agriculture and Clemson University. A significant part of the soybean acreage in other Southeastern states is planted with seed of this variety.

The adoption and growing of this variety has been one of the important reasons for the marked increase in the acreage planted to soybeans and in the improvement of the quality of the crop.

My Company has lost hundreds of thousands of dollars in its soybean business. At the same time, by all known standards, our business is recognized as being conducted in a sound and efficient manner.

While we have been losing money with this soybean item, many seed growers, good friends of ours, have been increasing seed of our variety that were purchased from us and most of them have had a profitable business based upon the production and merchandising of seed of Hampton 266.

We feel that we should have legal protection so that we may receive a deserved share of the total income from the sale of seed varieties developed by us as a result of our expensive research program. We know that, if the Congress passes legislation providing for Plant Variety Protection we, along with other plant breeders, can assure farmers of continued services of high quality seed of high performing varieties.

I am very grateful to you Mr. Chairman, and to the other members of the committee, for the opportunity of presenting my views relative to this proposed legislation.

Senator JORDAN. Mr. Renner.

STATEMENT OF VICTOR A. RENNER, CONSULTANT, O. M. SCOTT & SONS CO., MARYSVILLE, OHIO

Mr. RENNER. Mr. Chairman, my name is Victor A. Renner. I represent the O. M. Scott & Sons Co., Marysville, Ohio. I have a statement I would like to present for the record.

Senator JORDAN. It will be included in the record, in its entirety.

Mr. RENNER. The recent concern for the quality of our environment has focused attention on the potentials of plants, including turfgrasses and ground covers to contribute to improvement of our environment. The control of erosion, as well as pollution, by establishment of a thick cover of grasses, is self-evident to those having observed erosion in the form of clay and silt particles polluting our streams. This control could be of great benefit as we regenerate the capacity of plants to purify, regenerate oxygen and purify the atmosphere by removal of the silt and clay, as I have said.

In essence, we support this, and the development of these benefits will be enhanced by providing the proper incentive in the form of the limited rights provided in this bill.

Mr. Chairman, we appreciate greatly the opportunity to be heard. (The prepared statement of Mr. Renner is as follows:)

My name is Victor A. Renner. I represent the O. M. Scott & Sons Company, Marysville, Ohio. Presently I am serving in the capacity of Consultant. Prior to 1970, I served the Company for 25 years in the area of Research and Development; the last 10 years as Vice President and Director of Research.

Our Company supports S. 3070. We are in the business of serving the needs of the American public in developing and maintaining lawn and turf areas. Green lawns and turf areas are recognized for their contribution to the enjoyment of all in providing aesthetic beauty as well as a carpet for outdoor recreation of all types.

In our Research and Development work, the patent system has been recognized as essential to securing the results of efforts devoted to Research and Development for meaningful utilization by the Company. Without the incentive of securing rights for a limited time, it is questionable whether efforts devoted to Research and Development would have been as extensive as they have been in the past 25 years.

As a result of progress in the science and technology of development of plants of all kinds, more and more effort has been devoted to developing new strains of grass and other ground covers by genetic modification. Unlike developments in the chemical or mechanical fields, an adequate system for securing rights of new developments has not been available. As a result of our own Corporate Research and Development endeavors as well as those of others in this area, we visualize that benefits to the American public will be in the form of plants which will provide better performance with greater efficiency.

Recent concern on the quality of our environment has focused attention on the potentials of plants, including turfgrasses and ground covers, to contribute to improvement of our environment. The control of erosion, as well as pollution, by establishment of a thick cover of grasses is self-evident to those having observed erosion in the form of clay and silt particles polluting our streams. Recent investigations have shown that turfgrasses also tend to stabilize plant nutrients to a much higher degree than other crops. Plant nutrients such as nitrogen and phosphorous have been suspected of upsetting the balance in our streams and lakes.

Of even greater benefit, the regenerative capacity of grasses and plants on our atmosphere has heretofore not been considered of significance. With the concern of atmospheric pollution, an assessment of the potential capacity for plants to regenerate oxygen and to purify the atmosphere by removal of toxic substances emitted in our modern-day living is assuming ever greater importance.

As more and more emphasis will be placed on the quality of life in America, the need for more green areas, including turfgrasses and plants of all kinds, will increase. Development of ever better, more efficient plants, both with respect to maintenance as well as effectiveness in all areas of performance, will be required.

In the long-range future, we visualize development of plants that will have all the desirable plant attributes—esthetic value, serve as a living carpet or cover, aid in pollution control, serve as an air or atmosphere regenerator and serve as a source of food—for use outdoors as well as in enclosed systems for human habitation.

It is our position that the development of these benefits will be enhanced by providing the proper incentive in the form of limited rights to industry and others as provided in the Bill.

Senator JORDAN. Thank you very much, Mr. Renner.

That is an important part of agriculture, certainly.

Long grasses and pasture grasses, grasses for golf courses and a great many other things need protection and they need better seeds which will be constantly coming on the market.

Mr. RENNER. Better plants, yes.

Thank you very much, Mr. Chairman.

Senator JORDAN. Mr. Walker, president, Stoneville Pedigreed Seed Co.

STATEMENT OF GEORGE REA WALKER, PRESIDENT, STONEVILLE PEDIGREED SEED CO., STONEVILLE, MISS.

Mr. WALKER. Mr. Chairman, my name is George Rea Walker, and as you have said, I am president of Stoneville Pedigreed Seed Co.

I have a statement which I would like to submit.

Senator JORDAN. It will be carried in the record in its entirety.

Mr. WALKER. I shall let that stay for the record, and I thank you.

We strongly support S. 3070.

Senator JORDAN. Thank you very much, Mr. Walker, we appreciate your statement.

(The prepared statement of Mr. Walker is as follows:)

Mr. Chairman, my name is George Rea Walker. I am President of Stoneville Pedigreed Seed Company, Stoneville, Mississippi, and our company developed cotton varieties planted on over 25% of the U.S. acreage and 85% in the lower Rio Grande Valley of Texas.

We strongly support S. 3070 and related bills which will provide Plant Variety Protection to the developers of new varieties.

We support this legislation because it will stimulate private plant breeding, give farmers a wider choice of varieties which will be better in yield and quality and of greater importance, will improve the competitive position of U.S. farm products particularly cotton in world markets.

Our firm maintains one of the major cotton breeding research programs in the U.S., however, it is relatively small when compared to research programs of large companies involved in a wide range of crop varieties. In our company if legal Plant Variety Protection afforded by this legislation becomes a reality, we will immediately increase our research expenditures for cotton by more than 50%. We will further increase our research expenditures if the fruits of this expanded research program finds acceptance in the market place.

We would also expand our plant breeding research programs to include other crops grown in the areas in which our seed are now distributed. The crop which would receive first attention would be soybeans.

We strongly support this legislation since it will improve the lot of the American farmer and improve the overall position of our total agricultural economy. We strongly support this legislation and appreciate this opportunity of presenting this testimony.

Senator JORDAN. Mr. Scott

STATEMENT OF WALTER O. SCOTT, MEMBER, EXECUTIVE COMMITTEE, ASSOCIATION OF OFFICIAL SEED CERTIFYING AGENCIES, URBANA, ILL.

Mr. Scott. Mr. Chairman, members of the committee, I am Walter O. Scott, a member of the executive committee of the Association of Official Seed Certifying Agencies. I appreciate the opportunity to express the support of the association for the principle of plant variety protection as proposed in S. 3070.

The AOSCA is an organization of seed certifying agencies. There are 43 member agencies in the United States.

I have a prepared statement which I would like to enter into the record

Senator JORDAN. It will be carried in the record in its entirety.

Mr. SCOTT. Thank you. We do support the legislation.

Senator JORDAN. Thank you very much, Mr. Scott.

Mr. SCOTT. Thank you, sir.

(The prepared statement of Mr. Scott is as follows:)

Mr. Chairman and members of the committee. I appreciate the opportunity to express the support of the Association of Official Seed Certifying Agencies for the principle of plant variety protection as proposed in S.3070.

The AOSCA is an organization of seed certifying agencies. There are 43 member agencies in the United States. In most states the College of Agriculture, the Agricultural Experiment Station or the Extension Service is responsible for the seed certification program. In many of these states a grower organization is delegated the responsibility to carry on the program. In a few states a division or a section of the State Department of Agriculture is responsible for seed certification. Some of these also have active grower organizations that aid in the promotion of good seed.

In 1969 about 24,000 certified seed growers produced certified seed on over 2 million acres. Many of the certification agencies have two classes of membership, active and associate. Active members are those that are actively engaged in the certification of seed and associate are those not directly involved in seed certification but who support the principle and promote the use of good seed. There were almost 9,000 associate members among the 43 agencies in 1968.

Seed certification, briefly defined, involves the use of seed production and processing standards in combination with a system of record keeping, field inspections, and seed inspection to protect the genetic purity and maintain the genetic identity of crop varieties.

In the absence of this legislation anyone may legally reproduce and sell seed of varieties of the seed propagated crops. Some will argue that this is not an undesirable situation. However, as long as this situation exists, the cost of variety development in most self-pollinated crops will have to be borne by the United States taxpayer because private industry has little opportunity to protect and recover its research investment. In addition the number of people working in variety development in the self-pollinated crops will be confined to the number that can be committed to this type of research in public institutions such as the U.S.D.A. and at our land grant agricultural colleges.

This legislation will provide private industry with the opportunity to greatly increase its commitment of money and personnel to variety development. Industry will accept this opportunity and American agriculture is sure to benefit.

One of the important features of this bill is that it provides a choice in methods of protecting new varieties. The developer and/or owner may elect to exclude others from reproducing and selling his variety. If he elects to do this, the protection of the right to exclude others is his responsibility through the Civil courts.

On the other hand the owner may elect to specify that only Certified seed of his variety may be sold in the United States. One of the advantages of this form of protection is that violations involving seed moving in interstate commerce would be criminal acts and subject to prosecution by the Federal Government.

Many people associated with variety development and the commercial seed industry have felt that the seed certification form of protection is desirable because the financial burden of prosecuting violators in the Civil courts could be

a serious deterrent to the continued involvement of individuals or small relatively poorly financed plant breeding organizations in variety development.

Triumph wheat is one of the notable examples of the contribution of an individual who was interested in variety development as a hobby or avocation. Triumph was developed by a farmer in Oklahoma, the late Joseph Danne. At one time it was grown on more acres than any other wheat variety in the U.S. Examples of this type are not numerous but there have been enough to raise the concern that the benefits of plant variety protection should be convenient and available to all who engage in the development of varieties. The concern has been expressed that the efforts of these people would be lost if they were forced to prosecute through the Civil courts or to assign their new variety to a large organization capable of financing such action.

American agriculture needs an unending succession of new crop varieties because the hazards to crop production are constantly changing. For instance, as the result of natural hybridization of some fungus disease, new races of the disease develop. A variety of wheat which is resistant to the common races of stem rust when first released may be susceptible to new races which appear later. Insects often develop an appetite for a crop. Most of the insects that now feed on and damage soybeans were originally pests on other crops or weeds. Therefore, the need for new varieties is never satisfied.

By encouraging private industry to increase its commitment, plant variety protection will help assure that the improvement of crop varieties will keep pace with ever changing pests and needs.

Thank you for the opportunity to testify in support of this legislation.

Senator JORDAN. Mr. Ritchie Smith, National Cotton Council.

STATEMENT OF J. RITCHIE SMITH, ASSISTANT DIRECTOR OF RESEARCH, NATIONAL COTTON COUNCIL OF AMERICA, MEMPHIS, TENN.

Mr. SMITH. Thank you, Mr. Chairman.

I am J. Ritchie Smith, and I am assistant director of research for the National Cotton Council of America which has its headquarters in Memphis, Tenn.

I would like to say that the Council is the central organization of the raw cotton industry, representing cotton producers, ginners, merchants, warehousemen, cooperatives, spinners, and cottonseed crushers.

I also have a prepared statement which I would like to enter into the record, and at this time I would just like to simply say that the Council strongly supports the bill before your committee which establish an effective, equitable, workable system of voluntary plant variety protection.

Senator JORDAN. Thank you very much. It happens that I know a good deal about cotton, and we all know that the future of cotton, to a large extent, depends on not only better varieties but more pounds per acre if we are going to survive the competition of the synthetic fibers. We will have to develop better seed and other things that go along with it.

Mr. SMITH. We think this is very fundamental, doing exactly what you say.

Senator JORDAN. Thank you very much, and thank you for the work you and others are doing here.

(The prepared statement of Mr. Smith is as follows:)

Mr. Chairman, my name is J. Ritchie Smith and I am assistant director of research for the National Cotton Council of America. The Council, with headquarters in Memphis, Tennessee, is the central organization of the raw cotton industry, representing cotton producers, ginners, merchants, warehousemen, cooperatives, spinners and cottonseed crushers.

At their annual meeting in Atlanta last February, our delegates unanimously adopted a policy that the Council should:

Recognize the necessity for improving varieties and the quality of cotton planting seed; support legislation to establish an effective, equitable and workable system of voluntary plant variety protection, provided such system would allow any farmer the right to reproduce seed for his own planting, and would permit free interchange and research use of information, varieties, and other breeding material among plant breeders and other scientists; and continue to cooperate with the Joint Cotton Breeding Policy Committee in efforts to improve variety testing and the breeding, release and distribution of cotton planting seed which will best serve the interest of farmers and the entire cotton industry."

In pursuance of this policy the Council supports the bill before your committee, S-3070 with one suggested change. The bill if enacted will provide needed legal protection for the developers of all new plant varieties.

Plant breeding is fundamental to the future welfare of cotton. In its battle against man-made fibers, cotton must compete in quality and in price. Plant breeding is one of the vital keys to strengthening cotton's competitive position in both of these areas. It can give us new varieties which offer higher quality, value, and performance to our mill customers—and to the ultimate consumers. It also can lower production costs—and strengthen the farmer's ability to compete in price—by developing varieties which offer higher yields, better disease resistance, and other improvements which reduce unit costs.

Cotton urgently needs more attention and investment from plant breeders if it is to meet the test of modern competition. Yet the plain fact is that cotton is getting less attention—rather than more attention—from breeders. The reason is obvious: commercial breeders are losing money on cotton. They have no incentive to put heavy investments into cotton because they are denied the kind of legal protection of *their* new developments that has long been accorded to other innovators and inventors—including those who develop plants which are reproduced by asexual means.

We recently canvassed the commercial cotton breeding firms to ascertain their expenditures on cotton varietal development and what they expected to be spending in 1975, assuming cotton acreage would remain about as it is now. Ten firms, which account for varieties making up 65% of the acreage, reported that their expenditures would at least double if a variety protection system is established. On the other hand, the survey also revealed that expenditures would remain at today's already inadequate level or be lower if the lack of protection continues. Our contacts have also confirmed that the establishment of a variety protection system would bring other firms into the cotton breeding field.

A cotton breeder may devote 10 to 12 years, or more, to development of a new variety. He may spend several hundred thousand dollars—or perhaps a million—on that variety. Then, as soon as he puts his new variety on the market, *anyone* can come along and use the breeder's seed to reproduce and commercialize on the variety—without making any direct investment in the varietal development process.

Unless this situation is corrected, private investment in cotton plant breeding is assuredly on the wane. Those breeders who are continuing to put heavy emphasis on cotton are doing so in the hope and expectation that they will be provided reasonable legal protection for their investment, and be afforded the opportunity to make a return on that investment.

With the advent of hybrids in corn and grain sorghum—which gave breeders of these plants a built-in genetic protection for their efforts—we have seen vast increases in expenditure for varietal development on these crops by private firms. It has been good business for the firms involved, but producers of these crops and the general public have been the principal beneficiaries. Unfortunately, the hybrid principle cannot be made to work in many crops, including cotton, primarily because of difficulties in pollen transfer.

If we are to attract more private capital into cotton plant breeding, we must have a system of legal protection for the developers of plant varieties—whether reproduced asexually or sexually.

It is our opinion that S-3070 would provide an effective, equitable, and workable system for variety protection. The system would be open and available to any originator or developer of a new plant variety. But it would be a voluntary system; that is, the developer of a variety would not be required to use the system. Those choosing to use the system, however, could secure protection grants only on the basis of proof of novelty, distinctness, uniformity and stability of the variety.

Responsibility for the enforcement or defense of the protection granted is placed on the owner of the right, at his expense. Specific provision is made to permit and foster the free-flow of information and breeding materials among plant scientists.

I want to emphasize also that the bill would allow any farmer the right to reproduce seed for his own planting. And, of course, a farmer or anyone else could sell planting seed of a protected variety without infringement with authority from the owner of the right.

The bill sets 17 years from the date of issue of the protection certificate as the term of variety protection. This term or an even longer one may be necessary for some kinds of crops. For cotton, however, the term could be shortened—say to 10 or 12 years—without any adverse effects. We suggest, therefore, that different lengths of protection time for different kinds of plants or crops be established, based on specific requirements for each. In our view, this change would not alter the principles or intent of the bill, all of which we support, but it would make the bill sounder and more practical.

We, therefore, urge approval of S-3070 with the suggested change. The bill would extend to all plant breeders protection rights that have long been provided in some form for other innovators. Experience makes it abundantly clear that such protection is in the public interest. The investment and competition it will generate among cotton plant breeders also will serve the best interests of producers and the entire American cotton industry.

Mr. Chairman, we appreciate the opportunity to present the Council's views on this important matter.

Senator JORDAN. Mr. Stark of the Stark Bros. Nursery.

I have had the pleasure of visiting with you in my office many times. How are your applies getting along?

STATEMENT OF PAUL C. STARK, SENIOR VICE PRESIDENT, STARK BROS. NURSERIES & ORCHARDS CO., LOUISIANA, MO.

Mr. STARK. Pretty well.

I know you are in a hurry, Mr. Chairman, but there is one point I want to bring out that is rather essential here.

First of all, I want to say that I am in favor of the passage of H.R. 13613 and this bill, S. 3070.

I also want to make the point that in the past several years, many dedicated individuals, committees, and agencies have worked and cooperated in bringing this proposed legislation to its present form. The seed trade, the U.S. Department of Agriculture, State agricultural experiment stations and many others have cooperated in achieving this result.

It has been 40 years since the plant patent bill for asexually reproduced plants was passed, and it has been in successful operation all these years.

Now, since that time we have been working on this sexually produced thing, and all these people have worked out something. It is the first time we have ever gotten all to seem to agree on something. It is something that is important. For that reason, after long, careful study, I think it should be passed as soon as possible, because there are a lot of angles.

Now, the benefit of this legislation to the general public in coming years is emphasized by the added food and plant product requirements of our increasing national and world population. We all know what that means.

This bill will further stimulate industry to participate in research in improved types of sexually reproduced plants for the benefit and happiness of the public.

That is very important, I think.

Senator JORDAN. It certainly is.

(The prepared statement of Mr. Stark is as follows:)

My name is Paul C. Stark, Senior Vice President of Stark Bros. Nurseries and Orchards Co. of Louisiana, Mo. I am here to testify in favor of the passage of H.R. 13631 and I hope Congress will pass it this session. However, I wish to further state that I am definitely opposed to combining this proposed Plant Variety Protection Act for sexually reproduced plants with the successful 40 year old Plant Patent Amendment to the Patent law covering asexually reproduced plants.

During my entire adult life I have been interested in and associated with the encouragement and protection of Plant Breeders and Plant Discoverers. My father in our catalog of 1895, just 75 years ago, quoted an article from a horticultural magazine about the need for encouragement of plant breeders. In the same catalog he carried a photograph of Luther Burbank under the title "The Edison of Horticulture" and pointed out the contrast between the official encouragement of Thomas A. Edison, the mechanical inventor and Luther Burbank, the breeder of new plants with no protection.

Not until 1930, 35 years later, was this discrimination officially corrected partially by the passage of the Plant Patent Amendment to the U.S. Patent Law, which applied only to plants asexually reproduced, such as grafting, budding, cuttings from the new parent plants. It was a long, slow educational process of explanation to the public, to the horticultural trade and finally to Congress.

I mention above the "discrimination officially corrected partially" because sexually propagated plants were not covered by the Plant Patent Amendment to the basic patent law. That is one of the main reasons why we are here today when the Congress is holding hearings on this bill H.R. 13631.

I was closely associated with this problem, before and after, the passage of the Plant Patent Amendment in 1930, as chairman of the Plant Patent Committee of the American Association of Nurserymen and also chairman of the Plant Patent Committee of the American Seed Trade Association in the 1920s.

When it was decided to come to Congress with definite proposals in 1929, we were officially informed that the inclusion of sexually reproduced plants resulting from the crossing of the male and female would show variations in plant characteristics which would make enforcement under the patent law impractical or impossible.

This same situation did not exist with asexually reproduced plants as the reproduced plant was actually a part of the original plant and reproduced true. There had been no cross-breeding of the male and female in the process. Under these circumstances, all agreed that the proposed patent legislation should be limited to asexually reproduced plants. This bill received the support of many agricultural and horticultural individuals and associations, as well as leaders in other fields of science and industry. For instance, a telegram to Congress from Thomas A. Edison, was an important factor in securing the passage of this bill in the Senate. In the House of Representatives a letter written by Luther Burbank in 1926, just before his death, was equally influential in securing the approval of the House.

I have given this background because it explains why the protection and encouragement was not given to sexually reproduced plants. However, there has been and is now a strong sentiment for a form of encouragement and protection of sexually produced plants that will fit the characteristics and limitations of this division of plants.

I am speaking personally in support of this bill based on my continual observation and connection with this over-all problem and situation. It has been difficult in the past 40 years to get the various interests, public and private, to agree on a program of action that will fit the characteristics of sexually reproduced plants.

In the past several years, many dedicated individuals, committees and agencies have worked and cooperated in bringing this proposed legislation to its present form. The seed trade, the U.S. Department of Agriculture, State Agricultural Experiment Stations, and many others have cooperated in achieving this result.

It has been 40 years since the Plant Patent Bill for asexually reproduced plants was passed and it has been in successful operation all these years.

The present interested groups do not want to further delay the encouragement for improving sexually reproduced plants.

This bill, H.R. 13631, is the result of long careful study and planning by many different groups and agencies, both private and governmental—all desiring the

passage of legislation to give this encouragement and protection to the plant breeders and plant discoverers of new improved plants.

The benefit of this legislation to the general public in coming years is emphasized by the added food and plant product requirements of our increasing national and world population.

This bill will further stimulate industry to participate in research in improved types of sexually reproduced plants for the benefit and happiness of the public.

Senator JORDAN. We appreciate your being with us, Mr. Stark.

Mr. Fortmann, chairman, seed policy subcommittee, State experiment stations committee on organization and policy, University Park, Pa.

STATEMENT OF DR. HENRY R. FORTMANN, CHAIRMAN, SEED POLICY SUBCOMMITTEE, STATE EXPERIMENT STATIONS COMMITTEE ON ORGANIZATION AND POLICY, UNIVERSITY PARK, PA.

Mr. FORTMANN. I have a statement here, Mr. Chairman, which I would be happy to have entered into the record.

Senator JORDAN. It will go into the record in its entirety.

Mr. FORTMANN. With your permission, I will comment on a couple of highlights, since I represent the State public interests in this bill as chairman of the seed policy subcommittee of the experiment station committee on policy, which represents your fine institution at Raleigh.

Senator JORDAN. Good.

Mr. FORTMANN. I might say we have been studying this matter for something over 5 years in the State stations. We have had a series of regional meetings that were held in various sections of the country. The one for the South was at Knoxville, Tenn. At these meetings, we have explored all of the possible ramifications and implications of various alternatives for variety protection or breeders' rights.

We feel at this time that all of the questions which we have had in mind where there were doubts about various proposals for variety protection have been satisfied in S. 3070 and the State experiment committee on organization and policy of May 1, 1969, approved in principle all of the features encompassed in this bill.

So, we feel that this represents approval by the 53 State agricultural experiment stations in the 50 States and Puerto Rico.

Senator JORDAN. It is very important, to have the approval of these agencies, because they have done a tremendous amount of work, as you well know, in helping produce better varieties, particularly in their own area.

I live in a tobacco-producing State, as you know, and it is a very important part of our money crops down there. We have had problems year after year with different wilts and all kinds of things. If it were not for our experimental stations, sometimes I think the tobacco farmers would have been out of business a long time ago.

Mr. FORTMANN. We are happy to hear you say that, Mr. Chairman.

Senator JORDAN. Thank you.

(The prepared statement of Dr. Fortmann is as follows:)

I am Dr. Henry R. Fortmann, Regional Coordinator for the 14 State Agricultural Experiment Stations in the 12 Northeastern States. It has been my privilege to serve for the past five years as the Chairman of *The Seed Policy Subcommittee of The State Experiment Stations Committee on Organization and Policy (ESCOP)*. In this capacity, I also served as Co-chairman (along with Dr. Martin

Weiss, who represented the U.S. Department of Agriculture) of a Joint States-Federal Working group appointed to consider alternatives and implications of proposals for providing "Plant Variety Protection".

While I am a Professor of Agronomy and a forage crops breeder, my testimony today is being made as Chairman of the Seed Policy Subcommittee of ESCOP. I hasten to add, however, that my personal views are in complete agreement with the position of the Subcommittee.

The other members of the Seed Policy Subcommittee of ESCOP are:

Dr. R. D. Ensign, Associate Director of the Agricultural Experiment Station of the University of Idaho (Moscow), representing the 12 Western States;

Dr. J. A. Ewing, Dean of the Agricultural Experiment Station of the University of Tennessee (Knoxville), representing the 13 Southern States and Puerto Rico; and

Dr. E. F. Frolik, Dean of the College of Agriculture and Home Economics of the University of Nebraska (Lincoln), representing the 13 North central States.

It is important to know that the members of this subcommittee solicited opinions and recommendations concerning variety protection from the State Agricultural Experiment Station Directors and extension and research staff members in the four regions. Organized review and exploration of the many implications and ramifications of breeders rights was facilitated by means of a series of regional meetings:

Regional conferences on variety protection

<i>Region and place</i>	<i>Date</i>
Northeast, University Park, Pa.....	Nov. 27, 1968
Northcentral, Chicago, Ill.....	Dec. 11-12, 1968
Southern, Knoxville, Tenn.....	Feb. 13, 1969
Western, Salt Lake City, Utah.....	Jan. 29, 1969

Each of these regional conferences was attended by SAES, extension and USDA personnel. AOSCA and industry were represented at all four meetings.

In a report which I made for the subcommittee to the Experiment Station Committee on Organization and Policy (April 30, 1969), several conclusions concerning points of basic concern were enumerated. In essence the questions involving principles of "Plant Variety Protection" had been resolved to the satisfaction of the state station representatives. Points about which we were concerned and which appear to be satisfactorily incorporated in the proposed legislation include:

1. The system is voluntary.
2. The system is open to both public and private plant breeders.
3. The system will not unduly restrict the flow of germplasm.
4. The system provides for Variety Review Boards.
5. The system provides for exemption in order to expedite plant breeding or other bona fide research.
6. Provision is made for an individual to save seed and grow the resulting variety for his own use.
7. Provision is made for the possible use of certification and limited generations as a part of the variety protection system.

On May 1, 1969, ESCOP approved, in principle, the proposals for variety protection now encompassed in S.3070. This constitutes endorsement of the proposal by the 53 State Agricultural Experiment Stations of the United States.

I am most appreciative for the opportunity of presenting this statement to you today.

Senator JORDAN. Dr. Reeve. Dr. Reeve is from the Campbell Soup Co.

Dr. Reeve, we are glad to have you with us. I believe we are going to wrap this up on time.

I want to say that I appreciate very much the brevity of your statements. With your statements in the record and what you have said, it completely covers this bill. I do not think that I have ever held a hearing that was more for one side than this one has been—except one. That was when I happened to be on a committee with the power to accept money. Somebody wanted to give us \$20 million for a building, and I did not have a bit of trouble getting it through.

You may proceed, Mr. Reeve.

STATEMENT OF DR. ELDRON REEVE, VICE PRESIDENT, VEGETABLE RESEARCH, CAMPBELL INSTITUTE FOR AGRICULTURAL RESEARCH, CAMPBELL SOUP CO., CAMDEN, N.J.

Mr. REEVE. Mr. Chairman, after your introductory remarks, I am a little bit reluctant to present my case here. Anyway, with your permission, Mr. Chairman, my name is Eldron Reeve. I am appearing here as vice president, vegetable research, for the Campbell Institute for Agricultural Research, a Division of Campbell Soup Co. We have maintained active agricultural research and plant breeding programs for the past 33 years. During this period, we have released to the public domain 32 varieties of tomatoes in addition to new varieties of several other vegetable crops including potatoes, okra, Scotch peas peppers, rutabagas, and mushrooms.

My appearance here stems from a sincere belief that S. 3070 would severely impede progress in the development of new varieties of plants. Unprecedented progress has been made under the existing system free of artificial controls and protection. We believe S. 3070 is contrary to the best interests of the agricultural community and to the consuming public.

We respectively submit the following reasons in support of our opposition to the proposed legislation.

1. The release of new varieties would be delayed:

The success of any plant breeding program depends largely on the store of genetical material or germ plasm available to the plant breeder. For example our bank of tomato genetical material presently contains 2,249 items. These were obtained on a free exchange basis among plant breeders from all corners of the world. This material has provided the basis for the 32 tomato varieties we have developed and released.

As a result of activity in recent years leading up to the present proposed Plant Variety Protection Act there has been a perceptible reluctance among plant breeders to exchange genetical material. We believe enactment of S. 3070 would essentially eliminate exchange of valuable germ plasm and severely curtail the development of new varieties.

2. Administration of the proposed Plant Variety Protection Act would be difficult if not impossible:

Some varieties are morphologically indistinguishable, but differ in certain nutritional or flavor characteristics. For example, with respect to morphological characteristics (plant habits, fruit size and shape, color) the objective in several of our tomato breeding programs is identical but objectives with respect to solids, acidity and flavor components are different. To establish uniqueness with respect to solids, acidity, vitamin content and subtle volatile flavor components is extremely time-consuming and requires highly sophisticated equipment and specially trained personnel. Notwithstanding the time—perhaps years—and expense involved, we submit it would be next to impossible for the proposed plant variety protection office to establish uniqueness of such new varieties and to administer the program.

3. The cost would be exorbitant in terms of money and professional talent:

Applications for certificates of plant variety protection would be expensive for the proprietor to prepare and for the Commissioner to certify. In case of contested awards and infringement litigation, the cost in terms of money, delay in release of new varieties and unproductive use of professional talent would be enormous. These are costs that eventually must be borne by the consuming public.

4. The present, voluntary system encourages creativity and affords protection through seed certification and development of F_1 hybrids:

If desired, protection can be achieved through existing seed certification programs and the development of F_1 hybrids. F_1 hybrids provide a built-in protection system, since control of the parental material can be retained by the originator. The present voluntary system rewards creativity, free of the handicaps of an artificial protection system.

For the reasons enumerated above, we respectfully submit that S. 3070 is not required to provide protection for the development of new plant varieties, but would, in fact, impede progress and be detrimental to the interests of the agricultural community and the consuming public.

Thank you, Mr. Chairman.

Senator JORDAN. Thank you, Mr. Reeve.

Of course, you did reverse the trend here today.

Mr. REEVE. I am sorry.

Senator JORDAN. But that is all right. We want all views, and your testimony will certainly be considered by the committee. I can assure you of that. We appreciate your being here and giving us your thinking on it.

Mr. REEVE. Thank you very much.

Senator JORDAN. Thank you very much.

Is there anybody else who wishes to testify?

(No response.)

Senator JORDAN. I believe not.

I have a statement here from the American Farm Bureau Federation which will be filed in the record.

(The statement referred to follows:)

WASHINGTON, D.C., June 11, 1970.

HON. ALLEN J. ELLENDER,
Chairman, Committee on Agriculture and Forestry,
U.S. Senate, Washington, D.C.

DEAR SENATOR ELLENDER: The American Farm Bureau Federation is interested in S. 3070 and related bills which provide for the Plant Variety Protection Act. Our members are both producers of seed and users of seed and are therefore vitally affected.

In connection with the Plant Variety Protection Board that would be established by the legislation, we would urge that the bill be amended to provide for adequate farmer representation on the Board. As now written, it is unclear as to whether farmers would have any membership on the Board, and as both producers and users of seed, we believe farmers' interests should be represented.

The legislation currently provides for plant variety protection that would expire seventeen years from the date of issue of the certificate. We believe that farmers' interests would be better served by a lesser period of years of plant variety protection.

Many farmers derive substantial income from producing certified seed. Their right to produce certified seed should be protected by limiting the options given to breeders.

We recommend that the legislation be modified in these three respects before it is enacted.

We would appreciate your making this letter a part of the hearing record on S. 3070.

Sincerely yours,

MARVIN L. McLAIN,
Legislative Director, American Farm Bureau Federation,

Senator JORDAN. I have a statement for the record from the Delta & Pine Land Co., which will be included in the record.

(The statement referred to follows:)

STATEMENT OF EARLY C. EWING, JR., VICE PRESIDENT, DELTA & PINE LAND COMPANY, SCOTT, MISS.

Delta & Pine Land Company is a Mississippi corporation involved in farming and in the cotton planting seed business. This seed business is based on the sale of cotton varieties which have been developed by this company since it began a cotton breeding program in 1915. Our breeding efforts are almost entirely on cotton and are located at our nurseries here at Scott, Mississippi; Lubbock, Texas; and Casa Grande, Arizona. At present our work is limited almost entirely to cotton because we do not feel that the other field crops have a sale potential which would offset the cost of developing new varieties.

We are able to recover our costs in cotton because of our long experience with this crop and our success in developing very popular varieties. The custom of farmers in buying a certain amount of their cotton planting seed requirements from the breeders of these cottons and the difficulty of saving cotton planting seed in a general farming operation have led to our being successful. The fact is that we are our own worst competitor. In other words, competition with other sources of seed of varieties which we have developed is a bigger sales hurdle than varieties of competing cotton breeders. For example, in 1967 we introduced a new variety, Deltapine 16, which has been very popular. Last year acreage planted to our varieties in the United States increased 7 percent for a total of 26 percent. At the same time, however, our own sales of Deltapine varieties decreased 5 percent. Farmers generally are planting at a lower rate but this by no means accounts for the decline in our seed sales from one year to the next while the acreage planted to our varieties is showing a healthy increase. The Plant Variety Protection Act would enable us to participate in sales of our varieties based on the success of our research, development, and promotion. This Act would enable us to supervise the quality of seed sold which bears our variety name. We could expand our plant breeding efforts into major (or minor) crops which are grown in our area of production, for examples, soybeans, small grain, forages.

The Plant Variety Protection Act would offer benefits to farmers at the same time.

1. More firms would be interested in working on various varietal problems, so that finding solutions to these problems would be more likely.

2. The supply and quality of a particular variety would be more stable. Needs could be predicted so that present cycles of shortage and surplus seed could be equalized and the quality of these supplies could be much better supervised. At the present time in years of shortage caused by bad weather supplies of seed of very poor varietal purity and germination are being offered for sale. On the other hand in a good seed year the market is flooded so that legitimate seed producers must compete with large volumes of seed offered for sale by opportunists. It is a characteristic of the cottonseed business that cottonseed is produced as a by-product of the production of lint, so that all producers in a sense are potential producers of planting seed.

3. Prices of cotton planting seed tend to fluctuate rather widely with the supplies so that one year good quality seed may be priced about the same as oil mill seed and another year when there is a shortage seed of questionable quality is sold for very high prices.

4. While a breeder under the Plant Variety Protection Act would be entitled to the benefits of selling his variety, it is specifically written into the Act that nothing would interfere with a farmer's ability to plant seed which he himself has produced.

The seed industry as a whole would benefit from the Act.

1. Trade in seeds of varieties which would tend to be handled by legitimate seed dealers and less of it would be done by the in-and-outers with the result that much more stable quantities, qualities, and prices would prevail.

2. Independent producers and processors would not be forced out of business by seed breeding firms since with many field crops the amount of seed required is so great that no one company could produce and process the seed needed of his variety. The same people who are now growing seed and processing it would continue to do so except that the breeder would have a chance to participate in the success of his variety through licensing fees and to exercise a greater degree of supervision over the quality of seeds bearing his variety name.

3. Better supplies and quality of seed would lead to greater customer satisfaction, both for the seed dealer and the breeder. Farm products are used by a wide range of industries as a basic raw material and many products are used directly or after processing as food. Progress in varietal development encouraged by this law would result in products of better quality at lower cost.

Probable effects of this Act would be:

1. A considerably greater effort by commercial plant breeders to develop improved varieties of seed propagated crops which are not hybrids. Efforts to improve seed crops presently offered by private breeders would be increased since there would be assurance that successful efforts would be rewarded.

2. It is doubtful that an excessive number of proprietary varieties would be developed because the process of variety development is expensive and depends on the efforts of highly trained people over a considerable period of time. About 1960 our company started to develop from scratch a new variety of cotton adapted to the High Plains of Texas. It is expected that such a variety will be ready for growers about 1973, some 14 years after development was started and representing a cost of about \$450,000. The expenditure of this amount of money and time means that these efforts can be made only in cases where there is reasonable expectation that these expenses can be recovered from the sale of the resulting seed.

In designing this bill the authors have thoroughly studied the systems of other countries, have given wide publicity to its provisions, and have revised it to meet the needs of all those who might be affected by it. As a result it has broad support from many diverse groups, all of whom are interested in the improvement of American agriculture.

It is our firm belief that this Act will make possible the strengthening of agriculture with benefits to the seed breeder, the seed dealer, the farmer, and the ultimate consumer.

Senator JORDAN. I also have a letter from the Associated Hybrid Producers Cooperative Service of Hudson, Iowa. That will be included in the record.

(The letter referred to follows:)

HUDSON, IOWA, June 8, 1970.

CHAIRMAN,
Agricultural Research and General Legislation Subcommittee, Senate Committee on Agriculture and Forestry, U.S. Senate, Washington, D.C.

DEAR SIR: It is my understanding that on Thursday, June 11 your committee is to hold a hearing on S3070, which is a bill which would provide a plant variety protection act.

I have spent my lifetime in the seed business, have spent a great deal of time overseas in the marketing of American agricultural commodities, and am thoroughly convinced that we need legislation of this type. I have served as a member of the Breeders' Rights Study Committee of the American Seed Trade Association, and personally and in behalf of Associated Hybrid Producers, which is an organization of hybrid seed corn companies serving Iowa, Illinois and Indiana, I want to endorse S-3070 and urge that this bill be brought to the general committee on Agriculture and Forestry and to the floor of the Senate for favorable action.

Very truly yours,

GEO. M. STRAYER,
Secretary, Associated Hybrid Producers Cooperative Service.

Senator JORDAN. Thank you very much, gentlemen, for being with us today and for your testimony on this bill.

We shall act on this as soon as we can.

We will keep the record open through next Monday, if anybody has a statement he would like to file. If you can get it in, we will include it in the record.

Thank you very much.

(Whereupon, at 10:35 a.m., the hearing was concluded.)

(Additional statements filed for the record are as follows:)

RALEIGH, N.C., June 8, 1970.

Hon. B. EVERETT JORDAN,

Chairman, Subcommittee on Agricultural Research and General Legislation, Committee on Agriculture and Forestry, U.S. Senate, Washington, D.C.

DEAR SENATOR JORDAN: The Board of Directors of the N. C. Crop Improvement Association at their last meeting gave consideration to S.3070, a bill to give "Plant Variety Protection" to developers of novel crop varieties of sexually reproduced plants.

The N. C. Crop Improvement Association is the official seed certifying agency in North Carolina and as such is vitally interested in the development and release of improved crop varieties for our agricultural industry. We believe that the basic principle of providing plant variety protection will encourage the development of better crop varieties through expanded development research by private industry. Passage of this legislation will provide the means whereby the developers of a sexually reproduced variety may maintain some control of its seed increases after it has been released to the public. By so doing, the developer may recoup the investment which was made in research. We think this is necessary in order to assure the farmer of better varieties through expanded research by private industry.

The N. C. Crop Improvement Association, therefore, fully supports the basic principles incorporated in S.3070 and urge its favorable consideration for the advantages that will accrue to the farmers who need a continued supply of improved crop varieties.

We would appreciate it if you would include this letter in the record of the hearings on S.3070.

Sincerely,

FOIL W. McLAUGHLIN,

Director in Charge, North Carolina Crop Improvement Association.

STATEMENT OF JACK R. FELGENHAUER, PRESIDENT, WASHINGTON ASSOCIATION OF WHEAT GROWERS, RITZVILLE, WASH.

Mr. Chairman and members of the committee, we appreciate the opportunity to present this statement on H.R. 13631.

The Washington Association of Wheat Growers is a voluntary membership organization of wheat producers which has membership in excess of 3400 and maintains offices at 301 West Main, Ritzville, Washington 99169. The goal of the organization is to enhance the business climate in which the Washington wheat producer operates. To this end the Association has, since its inception in 1954, been involved in the development of both domestic and export markets for Pacific Northwest wheat. During the same time it has been involved in the development of wheat varieties having acceptable milling and end-use characteristics as well as acceptable agronomic characteristics. This total involvement has included not only an advisory capacity in the use of public funds but also, through the Washington Wheat Commission, the allocation of producer funds for wheat market and variety development. Since H.R. 13631 relates to and can be expected to generate more active entry into wheat variety breeding by private plant variety developers we are naturally concerned about its provisions.

In this respect our organization on June 9, adopted this policy position:

"This group supports the principle of the Plant Variety Protection Act provided that it is amended specifically for wheat as follows:

1. Improve the language to remove vagueness regarding security of breeding materials.

2. Require a descriptive statement of facts reporting conclusions of the proprietor with regard to certain quality related factors which are to be specified by the Commissioner of Plant Variety Protection.

In absence of the above amendments we recommend that wheat be deleted from the Act."

With respect to item number one: We believe H.R. 13631 as written presents an extreme potential for damage to the PNW wheat industry whose noncaptive export market customers are becoming increasingly quality conscious. Our present public breeders show a very high degree of concern for wheat end-use qualities and have been very successful in keeping our producers supplied with a succession of high-end-use-quality wheats to replace those that have become disease ridden and useless. Private breeders have not yet demonstrated this capability although we hope they soon do. Our industry cannot afford to risk damage to the public breeding program until such time as private breeders do demonstrate this capability.

The work of public wheat breeders would be highly susceptible to plagiarism and a subsequent blocking of their development efforts unless this Act gives them greater protection. Being public funded they must annually divulge information concerning lines being developed and must give the public easy access to variety test plots. In essence they are required to point out to an unscrupulous plant breeder exactly which test line seeds he should steal or which unique plant characteristics he should register for dishonest personal gain.

If the required divulgence of information and easy access is terminated then public confidence in USDA-ARS and state funded wheat development efforts will erode with a naturally expected result that public funding will be gradually withdrawn.

If the public breeder must for protection register every new experimental line he develops or if he must continually challenge variety registrations then a disproportionate and unnecessary amount of his development funds will be wasted nonproductively. Again confidence would be lost and withdrawal of funding could be expected to result.

We do not oppose a shift from public funded wheat variety development to privately funded development. Neither do we believe that all private plant breeders or companies are so unscrupulous that they would plagiarize the work of public plant breeders. We are concerned however, that adequate protection be given to the work of wheat breeders in public employ until such time as private breeders have demonstrated the same ability for achieving a continuing output of quality wheats as that demonstrated by public plant developers.

To the achievement of this end we request that the Act be amended to state that any wheat variety submitted for registration that has "unique and identifiable characteristics" of no discernible difference from a previously identity-numbered public station developed variety and which is subsequently challenged is presumed to have been first developed by the public experiment station and is not eligible for private registry unless the private breeder can establish to the satisfaction of the Commissioner that his variety was independently developed.

With respect to item number two: As previously indicated, wheat quality with respect to end-use characteristics has increasingly become a very important factor in the export marketing of Pacific Northwest wheat. In 1968 quality factors caused a loss of sales of several million dollars worth of this wheat in the Japanese market. It is therefore imperative that both wheat producers and merchandisers have available to them a reasonably accurate and use-oriented description of the quality of production that might be expected from a specific variety when grown in a specific locality.

The need to co-mingle wheat as it moves through the market channels means that a relatively small amount of visually unidentifiable wheat of poor quality could destroy the end-use quality of a much larger amount of acceptable quality wheat. This does happen now both through design and accident. To minimize this sort of thing both the producer and the merchandiser need to have at hand the best possible description with respect to the end-use qualities of a particular wheat variety.

It is not desired that this description be construed as a warranty, express or implied, or that any registered variety be required to meet specific quality standards prior to registry or release. It is desired that some mechanism be adopted that would assure reasonable accuracy of the quality description of varieties submitted for variety protection.

It is further desired that the Commissioner of Plant Variety Protection be required to use public hearings as a method in establishing and altering uniform standards for testing, that he establish requirements for comparative description and that the period of testing required not be overly long.

We therefore request that amendments to the Act (which will be submitted) be adopted before the Act is voted out of Sub-Committee.

Much of the economy of the State of Washington and the Pacific Northwest is dependent upon the export acceptability and sales of wheat that is produced within the region. We therefore respectfully request that you give fullest consideration to our requests in respect to H.B. 13631.

STATEMENT OF THOMAS B. HOUSE, PRESIDENT, AMERICAN FROZEN FOOD INSTITUTE

The undersigned Thomas B. House, President of the American Frozen Food Institute (formerly National Association of Frozen Food Packers), whose members pack some 90% of the national production of frozen vegetables, fruits, and juices and a large volume of other frozen foods, presents the following statement in behalf of the Institute and the industry it represents in connection with S. 3070.

The American Frozen Food Institute (AFFI) opposes S. 3070 providing for Certificates of Protection of 17 years duration for sexually reproduced fruit and vegetable varieties. For practical purposes the Certificate has most of the attributes of a patent.

There are many reasons supporting this position.

1. The development and release of new varieties will be delayed.
2. The free exchange of information, germ plasma, and breeding stock will be inhibited or limited.
3. It would be difficult or impossible to apply standards and procedures analogous to patents to sexually reproduced varieties. Sexually reproduced varieties are on the average more variable and unstable from area to area, season to season, and generation to generation than are those asexually reproduced. Thus the existing law as to asexually reproduced plants is not a precedent. The "invention" is in many cases incapable of identification and distinction. In many vegetable categories there are no universal guidelines, only a few people are expert enough to judge, and they are often likely not to agree.
4. Plant breeders generally cannot leap ahead from invention to invention. The many characteristics sought in breeding—such as sugar, acidity, color, solids, seed size, leaf area in relation to fruit yield, etc.—are difficult to measure accurately. Moreover most wanted characteristics are generally achieved bit by bit with barely observable improvements over preceding generations. The proposed law would either stultify this effort by plant breeders as they move ahead inch by inch or lead to continuous expensive litigation and infringement suits.
5. Time will be lost from plant breeding activities. Those gifted individuals now expert plant breeders will be required to devote considerable time to the technical and legal aspects of the Certificate of Protection law and the paper work involved in preparing applications to say nothing of interference and litigation proceedings.
6. The cost is considered prohibitive both to the Federal Government and the plant breeders. It has been estimated that 300 Certificates (patents) would be applied for yearly at a cost to the Department of Agriculture of between \$300,000 and \$400,000. It has also been estimated that the cost of preparing and filing an application for a Certificate (patent) would be about \$1,000 with additional prosecution costs amounting to \$500, assuming no extended proceedings such as an interference or appeal. Actually, there are many hundreds of thousands of varieties of a particular fruit or vegetable which will have to be properly dedicated to the public or certified (patented) by their present owners if the owners wish to safeguard what they already have. The estimate of 300 applications a year is not considered accurate, at least during the initial years. During these years the number of applications may be limited only by the available technical and legal personnel in private industry and their necessary counterparts in the Department of Agriculture.
7. This is in a sense special interest legislation. It establishes a monopoly by Certification as an inducement to further plant breeding when in fact today most sexual plant breeding, in terms of money expended and perhaps results, is already in the public domain or being dedicated to the public through the Federal Government, agricultural colleges, and private corporations which make their varieties available to all without charge. For example, it is estimated that out of a total agricultural research budget in the United States of about \$800,000,000 a year, \$400,000,000 is budgeted by the Depart-

ment of Agriculture and public institutions and really represents taxpayers' money spent for the benefit of the public generally.

8. Perhaps most important, the proposal is inequitable. Having in mind the volume over many years of fruit and vegetable research by public agencies and private corporations for their own benefit and the public domain, the inequity or windfall from the granting of a particular Certificate of Protection is apparent. For example, it is possible for a plant breeder to cross varieties A and B, which may together represent perhaps fifty man years of genetic research by the Department of Agriculture and one of our great universities. A and B were both in the public domain. C, the result of crossing A and B, can be the subject of a monopoly which to a great extent represents the accumulation of knowledge and breeding by two great institutions achieved over many years.

For these reasons it is respectfully submitted that S. 3070 should not be enacted. The Institute has limited its opposition to S. 3070 as it applies to sexually reproduced fruits and vegetables. We express no opinion as to sexually reproduced flowers and ornamentals because from the viewpoint of the consuming public aesthetics rather than food is involved and because of the more limited interest of our membership, who are generally not involved in the propagation of flowers and ornamentals. Nor is this Institute opposed, indeed we actively support, the extension and improvement of the traditional seed certification programs, which bear no resemblance to S. 3070, and the use by plant breeders of F1 hybrids. Both of these methods afford some protection for plant breeders with minimal disadvantages and costs for plant breeders, farmers, processors, and consumers.

Thank you for affording us the opportunity of presenting our views.

STATEMENT OF E. HERVEY EVANS, JR., PRESIDENT, McNAIR SEED COMPANY,
LAURINBURG, N.C.

Mr. Chairman, my name is E. Hervey Evans, Jr. I am President of McNair Seed Company, a seed breeding firm located in Laurinburg, N.C. In addition, I have been actively engaged in farming on a commercial basis all my working life. My purpose in this testimony is to state my conviction that Senate Bill S-3070, better known as the Plant Variety Protection Act, represents one of the most significant and beneficial pieces of agricultural legislation ever presented before the Congress for passage.

As you know, our founding fathers recognized in the Constitution the desirability of encouraging creative, inventive genius by making possible, for a limited period of time, the protection of the right of inventors to exploit their inventions in the marketplace. That our modern patent system has operated to stimulate research greatly and has been in large part responsible for the technological, scientific, and medical advancements that have made our society the most highly developed society in the history of the world can hardly be debated.

The question before us is whether similar benefits to mankind can result from the passage of the Plant Variety Protection Act which would grant limited protection to those creative people who develop new and improved varieties of agricultural crops. In answering this question, it is helpful to look at the history of agriculture for the last 30 years or so.

The first natural protection afforded plant breeders came with the development of hybrid corn. Because the very system of producing hybrid corn meant that the plant breeder controlled his parent lines of corn from which the hybrid was produced, the farmer came back to the hybrid seed corn producer each year for a new supply of seed. Of course, this assured a market for good hybrid corn varieties and the possibility of recouping the large investments in research which had to be incurred by the plant breeder in order to develop new hybrids. As a result, we witnessed a tremendous investment by private breeding companies in research and a competitive research situation which led to an unprecedented advance in agricultural productivity. Although the cost of seed rose slightly to the farmer, this increased productivity actually brought about a significant reduction in the cost per bushel of corn produced. To illustrate, the average corn yields in my state of North Carolina rose from approximately 22 bushels per acre 30 years ago to about 70 bushels per acre today. Even though seed costs rose from \$1.00 per acre to about \$2.25 per acre during this period, the higher yields reduced the seed costs per bushel of corn produced from 18 percent of value of the corn to just slightly over 2 percent. Farmers responded by planting virtually 100 percent of their acreage to hybrid varieties.

A similar story exists in the case of other hybrid crops such as grain sorghum since all hybrid crops offer the breeder a measure of plant variety protection. Clearly, this protection is what has attracted the tremendous investments by competing seed breeders.

No such progress has been made with most of the self-pollinated crops like soybeans, smallgrain, and cotton which by nature do not lend themselves to the production of hybrid seed. Such crops offer no protection to the breeder, and so there is comparatively little private research undertaken on them.

Do we need to encourage such research? This might be a good question in these days of agricultural surpluses.

Agricultural surpluses have a way of vanishing overnight. The soybean market today is an example of the change from surplus to short supply in only one year. In the years ahead, the tremendous population growth expected in this country and throughout the world will make the risk of acute shortages even greater. What nation would choose willingly a situation of shortages of agricultural commodities in preference to a normal situation of modest surpluses, even with the problems that surpluses create? The answer is obvious. One way to avoid the serious problems of future shortages is to encourage private research to develop better performing crops. This the Plant Variety Protection Act would do.

Let us remember that plant breeding research is a slow, expensive process, normally taking a minimum of 10 generations at best between the making of an initial cross between two plants and the release of a new variety to farmers. This is one more reason for acting now to encourage the development of new crop varieties to meet the expanding consumption needs and potential shortages of tomorrow's world.

The Plant Variety Protection Act in its present form has been carefully worded to satisfy the needs of many diverse groups in Agriculture without sacrificing any of the major principles of plant variety protection. The American Seed Trade Association, State Seed Associations, Crop Improvement Associations, Agricultural Experiment Stations, public as well as private plant breeders, Federal and State Seed Control Officials, the United States Department of Agriculture, farm organizations, seed dealers and distributors, and farmers themselves have participated in the drafting of this legislation. Each objection along the way has been weighed carefully by all concerned, and these objections have resulted in much strengthening of the proposed legislation. Many organizations will have testified before this committee in favor of the bill.

I have confidence that the decision of this committee will be a favorable one towards the Plant Variety Protection Act and I appreciate the privilege you have given me to present this testimony.



LEGISLATIVE HISTORY
Public Law 91-577
S. 3070

TABLE OF CONTENTS

Index and summary of S. 3070.....	1
-----------------------------------	---

RECEIVED
17-27
1906

RECEIVED

..... 1906

Index and summary of S. 3070

Sept. 14, 1969	Rep. Purcell introduced H. R. 13631 which was referred to House Agriculture Committee. Print of bill as introduced.
Oct. 23, 1969	Sen. Miller introduced and discussed S. 3070 which was referred to Senate Agriculture and Forestry Committee. Print of bill as introduced.
Aug. 21, 1970	Senate committee reported S. 3070 with amendment. S. Rept. 91-1138. Print of bill and report.
Aug. 24, 1970	S. 3070 was re-referred to Senate Judiciary Committee.
Sept. 29, 1970	Senate Judiciary Committee reported S. 3070 with amendments. S. Rept. 91-1246. Print of bill and report.
Oct. 2, 1970	Senate passed S. 3070 as reported by both committees.
Oct. 5, 1970	S. 3070 was referred to House Agriculture Committee. Print of bill as referred.
Oct. 13, 1970	House committee reported S. 3070 without amendment. H. Rept. 91-1605. Print of bill and report.
Dec. 1, 1970	Rules Committee granted an open rule for consideration of S. 3070.
Dec. 8, 1970	S. 3070 was passed with amendments.
Dec. 9, 1970	Senate agreed to House amendments.
Dec. 24, 1970	Approved: Public Law 91-577

H. R. 13631

SEPTEMBER 4, 1969

A BILL

To encourage the development of novel varieties of sexually reproduced plants and making them available to the public, by making protection available to those who breed, develop or discover them, thereby promoting progress in the useful art of agriculture.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 TITLE I—PLANT VARIETY PROTECTION

4 OFFICE

Chapter	Section
1. Organization and Publications-----	1
2. Legal Provisions as to the Plant Variety Protection Office-----	21
3. Plant Variety Protection and Rights-----	31

1 **Chapter 1.—ORGANIZATION AND PUBLICATIONS**

2 **Section 1. Establishment.**

3 There is hereby established in the Department of Agri-
4 culture a bureau to be known as the Plant Variety Protec-
5 tion Office, which shall have the functions set forth in this
6 Act.

7 **Sec. 2. Seal.**

8 The Plant Variety Protection Office shall have a seal
9 with which documents and certificates evidencing plant
10 variety protection shall be authenticated.

11 **Sec. 3. Officers and Employees.**

12 (a) There shall be in the Plant Variety Protection
13 Office a Commissioner of Plant Variety Protection, one As-
14 sistant Commissioner, and an appropriate staff. The Assistant
15 Commissioner shall perform the duties pertaining to the
16 office of Commissioner assigned to him by the Commissioner
17 and shall fill the office of Commissioner during a vacancy in
18 that office or in the absence of the Commissioner. The Com-
19 missioner of Plant Variety Protection shall be appointed by
20 the Secretary.

21 (b) The Secretary is authorized to fix the per annum
22 rate of basic compensation of each staff member in the Plant
23 Variety Protection Office at not in excess of the maximum
24 scheduled rate provided for positions in level V of section
25 5316 of title 5, United States Code.

1 **Sec. 4. Restrictions on Employees as to Interest in Plant**
2 **Variety Protection.**

3 Employees of the Plant Variety Protection Office, in-
4 cluding the Commissioner and Assistant Commissioner, shall
5 be ineligible during the periods of their employment, to apply
6 for plant variety protection and to acquire directly or in-
7 directly, except by inheritance or bequest, any right or
8 interest in any matters before that office. This section shall
9 not apply to members of the Plant Variety Protection Board
10 who are not otherwise employees of the Plant Variety
11 Protection Office.

12 **Sec. 5. Bond of Commissioner and Employees.**

13 The Commissioner and such other employees as he des-
14 ignates, before entering upon their duties, shall severally give
15 bond, with sureties, the former in the sum of \$10,000, and
16 the latter in sums prescribed by the Commissioner, condi-
17 tioned for the faithful discharge of their respective duties and
18 that they shall render to the proper officers of the Treasury
19 a true account of all money received by virtue of their
20 offices.

21 **Sec. 6. Duties of Commissioner, Regulations.**

22 The Commissioner, who shall report directly to the Sec-
23 retary, shall superintend or perform all duties required here-
24 under, and he shall have charge of property belonging to
25 the Plant Variety Protection Office. He may establish regula-

1 tions, not inconsistent with law, for the conduct of proceed-
2 ings in the Plant Variety Protection Office after consultations
3 with the Plant Variety Protection Board. All regulations
4 issued pursuant to this title shall be subject to the approval of
5 the Secretary.

6 **Sec. 7. Plant Variety Protection Board.**

7 (a) APPOINTMENT.—The Secretary shall appoint a
8 Board on plant variety protection. The Board shall consist
9 of individuals who, as a group, are expert in various areas of
10 varietal development covered by this Act. Membership of
11 the Board shall be drawn approximately equally from the
12 private or seed industry sector and from the sector of govern-
13 ment or the public. The Commissioner or his designee shall
14 act as chairman of the Board without voting rights except
15 in the case of ties.

16 (b) FUNCTIONS OF BOARD.—The functions of the Plant
17 Variety Protection Board shall include:

18 (1) Advising the Commissioner concerning the
19 adoption of Rules and Regulations to facilitate the proper
20 administration of this Act; and

21 (2) Making advisory decisions on all appeals from
22 the Examiner. The Board shall determine whether to
23 act as a full Board or by panels it selects; and whether
24 to review advisory decisions made by a panel. For serv-
25 ice on such appeals, the Board may select, as temporary

1 members, experts in the area to which the particular
2 appeal relates.

3 (3) Advising the Secretary on all questions under
4 section 44.

5 (c) COMPENSATION OF BOARD.—The members of the
6 Plant Variety Protection Board shall serve without compen-
7 sation except for standard government reimbursable expenses.

8 **Sec. 8. Library.**

9 The Commissioner shall maintain a library of scientific
10 and other works and periodicals, both foreign and domestic,
11 in the Plant Variety Protection Office to aid the officers in
12 the discharge of their duties.

13 **Sec. 9. Register of Protected Plant Varieties.**

14 The Commissioner shall maintain a register of published
15 specifications of United States protected plant varieties and
16 a file of such other scientific and technical information as may
17 be necessary or practicable.

18 **Sec. 10. Publications.**

19 (a) The Commissioner may publish, or cause to be pub-
20 lished, in such format as he shall determine to be suitable, the
21 following:

22 (1) The specifications for plant variety protection
23 including drawings and photographs.

24 (2) The Official Journal of the Plant Variety Pro-
25 tection Office, including annual indices.

1 (3) Pamphlet copies of the plant variety protection
2 laws and rules of practice and circulars or other publica-
3 tions relating to the business of the Office.

4 (b) The Plant Variety Protection Office may print the
5 heading of the drawings or photographs for protected plant
6 varieties for the purpose of photolithography and any lithog-
7 raphy to appear on the same page.

8 (c) The Commissioner may (1) establish public facili-
9 ties for the searching of plant variety protection records and
10 materials, and (2) from time to time, as through an informa-
11 tion service, disseminate to the public those portions of the
12 technological and other public information available to or
13 within the Plant Variety Protection Office to encourage inno-
14 vation and promote the progress of the useful arts.

15 (d) The Commissioner may exchange any of the pub-
16 lications specified for publications desirable for the use of the
17 Plant Variety Protection Office. The Commissioner may
18 exchange copies of specifications, drawings, and photographs
19 of United States protected plant varieties for copies of speci-
20 fications, drawings, and photographs of applications and pro-
21 tected plant varieties of foreign countries.

22 **Sec. 11. Copies for Public Libraries.**

23 The Commissioner may supply printed copies of speci-
24 fications, drawings, and photographs of protected plant varie-

ties to public libraries in the United States which shall maintain such copies for the use of the public.

Chapter 2.—LEGAL PROVISIONS AS TO THE PLANT VARIETY PROTECTION OFFICE

Sec. 21. Day for Taking Action Falling on Saturday, Sunday, or Holiday.

When the day, or the last day, for taking any action or paying any fee in the United States Plant Variety Protection Office falls on Saturday, Sunday, a holiday within the District of Columbia, or on any other day the Plant Variety Protection Office is closed for the receipt of papers, the action may be taken or the fee paid, on the next succeeding business day.

Sec. 22. Form of Papers Filed.

The Commissioner may by regulations prescribe the form of papers to be filed in the Plant Variety Protection Office.

Sec. 23. Testimony in Plant Variety Protection Office Cases.

The Commissioner may establish regulations for taking affidavits, depositions, and other evidence required in cases before the Plant Variety Protection Office. Any officer authorized by law to take depositions to be used in the courts of the United States, or of the State where he resides, may take such affidavits and depositions, and swear the witnesses. If any

1 person acts as a hearing officer by authority of the Commis-
2 sioner, he shall have like power.

3 **Sec. 24. Subpenas, Witnesses.**

4 (a) The clerk of any United States court for the district
5 wherein testimony is to be taken in accordance with regula-
6 tions established by the Commissioner for use in any con-
7 tested case in the Plant Variety Protection Office shall, upon
8 the application of any party thereof, issue a subpoena for any
9 witness residing or being within such district or within one
10 hundred miles of the stated place in such district, command-
11 ing him to appear and testify before an officer in such
12 district authorized to take depositions and affidavits, at the
13 time and place stated in the subpoena. The provisions of the
14 Federal Rules of Civil Procedure relating to the attendance
15 of witnesses and the production of documents and things shall
16 apply to contested cases in the Plant Variety Protection
17 Office insofar as consistent with such regulations.

18 (b) Every witness subpoenaed or in attendance shall be
19 allowed the fees and traveling expenses allowed to witnesses
20 attending the United States district courts.

21 (c) A judge of a court whose clerk issued a subpoena
22 may enforce obedience to the process or punish disobedience
23 as in other like cases, on proof that a witness, served with
24 such subpoena, neglected or refused to appear or to testify.

1 No witness shall be deemed guilty of contempt for disobeying
2 such subpoena unless his fees and traveling expenses in going
3 to, and returning from, one day's attendance at the place
4 of examination, are paid or tendered him at the time of the
5 service of the subpoena; nor for refusing to disclose any
6 secret matter except upon appropriate order of the court
7 which issued the subpoena.

8 **Sec. 25. Effect of Defective Execution.**

9 Any document to be filed in the Plant Variety Protec-
10 tion Office and which is required by any law or regulation to
11 be executed in a specified manner may be provisionally ac-
12 cepted by the Commissioner despite a defective execution,
13 provided a properly executed document is submitted within
14 such time as may be prescribed.

15 **Sec. 26. Regulations for Practice Before the Office.**

16 The Commissioner, subject to the approval of the Secre-
17 tary, may prescribe regulations governing the recognition
18 and conduct of persons representing applicants or other par-
19 ties before the Plant Variety Protection Office. The Com-
20 missioner may, after notice and opportunity for a hearing
21 suspend or exclude, either generally or in any particular
22 case, from further practice before the Office of Plant Variety
23 Protection any person shown to be incompetent or disrepu-
24 table or guilty of gross misconduct.

1 **Sec. 27. Unauthorized Practice.**

2 Anyone who engages in direct or indirect practice
3 before the Office of Plant Variety Protection while sus-
4 pended or excluded under section 26, or without being
5 either authorized to practice law where he maintains his
6 office, or authorized by the Commissioner on the basis
7 of having established his ability and character, shall be
8 liable in a civil action for the return of all money re-
9 ceived, and for compensation for damage done by such
10 person and also may be enjoined from such practice.
11 However there shall be no liability for damage if such
12 person establishes that the work was done competently
13 and without negligence. This section does not apply to
14 anyone who, without a claim of self sufficiency, works
15 under the supervision of another, who is thus authorized
16 and is the responsible party; nor to anyone who estab-
17 lishes that he acted only on behalf of any employer by
18 whom he was regularly employed.

19 **Chapter 3.—PLANT VARIETY PROTECTION FEES**

20 **Sec. 31. Plant Variety Protection Fees.**

21 (a) The Commissioner shall charge the following fees:

22 (1) On filing each application for a certificate of
23 plant variety protection, \$50.

24 (2) For issuing each certificate of plant variety

1 protection, \$50 unless the drawing or photograph to be
2 reproduced is in color and in that event, \$75.

3 (3) On appeal under section 63 of this title, for
4 the first time from the examiner to the Plant Variety
5 Protection Board, \$50. In addition, when consideration
6 by the Plant Variety Protection Board is reached, \$50.

7 (4) For certificate under section 85 or under sec-
8 tion 86 of this title, \$15.

9 (5) As available: For uncertified copies of specifi-
10 cation, drawing, and photographs which have been pub-
11 lished, such fees and charges as the Commissioner may
12 establish.

13 (6) For recording every assignment, agreement,
14 or other paper relating to the property in a plant variety
15 protection application, \$10: where the document re-
16 lates to more than one plant variety protection applica-
17 tion, \$1 for each additional item.

18 (7) For each certificate certifying copies of records,
19 \$1.

20 (8) For delayed payment or other action when
21 permitted upon payment of special fee, \$10.

22 (b) The Commissioner may reduce any fees under this
23 section found to be in excess of direct costs.

24 (c) The Commissioner may establish charges for copies

1 of records, publications, or services furnished by the Plant
2 Variety Protection Office, not specified above.

3 **Sec. 32. Payment of Plant Variety Protection Fees; Re-**
4 **turn of Excess Amounts.**

5 All fees shall be paid to the Commissioner, who shall
6 deposit the same in the Treasury of the United States in
7 such manner as the Secretary of the Treasury directs, and
8 the Commissioner may refund any sum paid by mistake
9 or in excess of the fee required.

10 **TITLE II—PROTECTABILITY OF PLANT**
11 **VARIETIES AND CERTIFICATES OF PRO-**
12 **TECTION**

Chapter	Section
4. Protectability of Plant Varieties.....	41
5. Applications: Form, Who May File, Relating Back, Confiden- tiality	51
6. Examination: Response Time, Initial Appeals.....	61
7. Appeals to Courts and Other Review.....	71
8. Certificates of Plant Variety Protection.....	81
9. Reexamination after Issue, and Contested Proceedings.....	91

13 **Chapter 4.—PROTECTABILITY OF PLANT**
14 **VARIETIES**

15 **Sec. 41. Definitions and Rules of Construction.**

16 The definitions and rules of construction set forth in this
17 section apply for the purposes of this title.

18 (b) The term “novel variety” may be represented by,
19 without limitation, seed, transplants, clones, and plants, and
20 is satisfied if there is:

21 (1) Distinctness in the sense that the variety clearly

differs by one or more identifiable morphological, physiological or other characteristics, as to which a difference in genealogy may contribute evidence, from all prior varieties of public knowledge at the date of determination within the provisions of section 42; and

(2) Uniformity in the sense that any variations are describable, predictable and commercially acceptable; and

(3) Stability in the sense that the variety may be sexually reproduced with its distinctive characteristics, with a reasonable degree of reliability, or to a degree comparable to that of other varieties of the same kind.

(c) The terms "United States" and "this country" mean the United States of America, its territories and possessions, and the Commonwealth of Puerto Rico.

(d) The term "effective filing date," includes the filing date to which an application for plant variety protection is entitled under the provisions of section 55 of this title.

(e) The term "effective filing date actually in the United States," means the earliest filing date to which an application for plant variety protection is entitled under the provisions of section 55 (b) of this title, excluding section 55 (a).

(f) The term "kind" means one or more related species or subspecies singly or collectively known by one common name, for example, soybean, flax, carrot, or radish.

1 (g) The term "date of determination" means the date
2 when there has been at least tentative determination that the
3 variety has been sexually reproduced with recognized char-
4 acteristics making it a novel variety, whether or not the
5 novelty thereof has been determined.

6 (g) The terms "breeder" and "discoverer" shall each
7 include the other as shall the terms "breed," "develop" and
8 "discover." The breeders or discoverers are those who direct
9 the final breeding, creating the novel variety or discover the
10 novel variety and, in either case, direct the determination
11 required by subsection (f).

12 (h) The term "sexually reproduced" shall include re-
13 peated sexual production through the reproduction system
14 designated by the breeder.

15 (i) The term "proprietor" when distinguished from
16 "breeder" means the employer when the breeder's work was
17 done for hire without contrary agreement, or other owner
18 by assignment or operation of law; but otherwise may in-
19 clude the applicant until his position is taken by his successor
20 in title, after which, the term "applicant" may mean
21 proprietor.

22 (j) The term "basic seed" means the seed planted to
23 produce certified or commercial seed.

24 (k) The term "testing" includes the period during
25 which there is testing of seed or other sexually reproducible

1 plant material, before any sale thereof, even though such
 2 material may be given out, provided the purpose is for ex-
 3 perimental testing on behalf of the proprietor, with observa-
 4 tion by or reported to the proprietor (even though the crop
 5 is used or sold for other than seed).

6 (l) The term “public variety” means a variety in this
 7 country which is known or used, other than by the breeders
 8 and their associates, or on sale; if other than secretly or for
 9 the purpose of experimenting or testing; or as individual
 10 plants not known to be either sexually self-reproducible or
 11 repeatedly producible sexually at will.

12 (m) A variety described in a publication as specified
 13 in section 42 (a) is “effectively available to workers in this
 14 country” if a source from which it can be purchased is indi-
 15 cated in a publication or readily determinable or if the publi-
 16 cation teaches how to produce the variety from source-ma-
 17 terial available to workers in this country.

18 **Sec. 42. Right to Plant Variety Protection; Plant Varieties**
 19 **Protectable.**

20 Whoever is the breeder or the discoverer of any novel
 21 variety of sexually reproduced plant, except as excluded in
 22 section 45, or his successor in title, shall be entitled to plant
 23 variety protection therefor, subject to the conditions and re-
 24 quirements of this title unless one of the following bars exists:-

(1) Before the date of determination thereof by the breeder, or more than one year before the effective filing date of the application therefor, the variety was (A) a public variety in this country, or (B) effectively available to workers in this country and adequately described by a publication reasonably deemed a part of the public technical knowledge in this country which description must include a disclosure of the principal characteristics by which the variety is distinguished.

(2) The variety, though not in use or on sale in this country, was in use or on sale elsewhere, other than secretly or for the purpose of experimenting or testing, by or in the knowledge of the applicant or his predecessor in title, or their agents or representatives, more than one year before the effective date of the application therefor.

(3) An application for protection of the variety based on the same breeders acts, was filed in a foreign country by the proprietor or his privies more than one year before the effective filing date actually in the United States.

(4) Another is entitled to an earlier date of determination for the variety; provided however, that the benefit of a date of determination can be lost by not con-

1 tinuing a program of development and testing to com-
2 mercialization.

3 **Sec. 43. Reciprocity Limits.**

4 Protection under the Act shall be limited to proprietors
5 who are nationals of the United States, except where this lim-
6 itation would violate a treaty and except that proprietors
7 who are nationals of a foreign state in which they are dom-
8 iciled shall be entitled to so much of the protection here
9 afforded as is afforded by said foreign state to nationals of the
10 United States for the same genus and species.

11 **Sec. 44. Public Interest In Wide Usage.**

12 The Secretary may declare a protected variety open to
13 use on a basis of equitable remuneration to the proprietor,
14 not less than a reasonable royalty, when he determines that
15 such declaration is necessary in order to insure an adequate
16 supply of fiber, food or feed in this country and that the
17 proprietor is not supplying the public needs at a price which
18 may reasonably be deemed fair. Such declaration may be,
19 with or without limitation, with or without designation of
20 what the remuneration is to be; and shall be subject to re-
21 view as under section 71 or 72 (any finding that the price
22 is not reasonable being reviewable), and shall remain in
23 effect not more than two years. In the event litigation is

1 required to collect such remuneration, a higher rate may be
2 allowed by the Court.

3 **Sec. 45. Exclusions From Eligibility for Protection.**

4 Protection under this Act shall not be available for:

5 (a) Fungi and Bacteria,

6 (b) Hybrids.

7 **Chapter 5.—APPLICATIONS: FORM, WHO MAY FILE,**
8 **RELATING BACK, CONFIDENTIALITY**

9 **Sec. 51. Application for Recognition of Plant Variety**
10 **Rights.**

11 (a) An application for a certificate of Plant Variety
12 Protection may be filed by either the breeder or the pro-
13 prietor of the variety sought to be protected. The applica-
14 tion shall be made in writing to the Commissioner, shall be
15 signed by or on behalf of the applicant, and shall be accom-
16 panied by the prescribed fee. An application filed by a per-
17 son not the breeder shall state the basis on which it is filed.

18 (b) An error as to the naming of the breeder, without
19 deceptive intent, may be corrected at any time, in accordance
20 with regulation established by the Commissioner.

21 **Sec. 52. Content of Application.**

22 An application for a certificate recognizing plant variety
23 rights shall contain:

24 (1) The name of the variety except that a tempo-

1 rary designation will suffice until the certificate is to be
2 issued.

3 (2) A description of the variety setting forth its
4 novelty and a description of the genealogy and breeding
5 procedure, when known. The Commissioner may require
6 amplification, including the submission of adequate
7 photographs or drawings or plant specimens, if the
8 description is not adequate or as complete as is reason-
9 ably possible, and submission of records or proof of
10 proprietorship or of allegations made in the application.

11 A proprietor may add to or correct the description at
12 any time, before the certificate is issued, upon a showing
13 acceptable to the Commissioner that the revised descrip-
14 tion is retroactively accurate. Courts shall protect others
15 from any injustice which would result. The Commis-
16 sioner may accept records of the originator and of any
17 official seed certifying agency in this country as evidence
18 of stability where applicable.

19 (3) A declaration that a viable sample of basic seed
20 necessary for propagation of the variety will be deposited
21 and replenished periodically in a public repository in
22 accordance with regulations to be established hereunder.
23 This declaration may be added by amendment.

1 **Sec. 53. Joint Breeders.**

2 (a) When two or more persons are the breeders, one
3 (or his successor) may apply, naming the others.

4 (b) The Commissioner, after such notice as he may
5 prescribe, may issue a certificate of plant variety protection
6 to the applicant and such of the other breeders as may have
7 subsequently joined in the application.

8 **Sec. 54. Death or Incapacity of Breeder.**

9 Legal representatives of deceased breeders and of those
10 under legal incapacity may make application for plant vari-
11 ety protection upon compliance with the requirements and
12 on the same terms and conditions applicable to the breeder
13 or proprietor.

14 **Sec. 55. Benefit of Earlier Filing Date.**

15 (a) An application for plant variety protection for a
16 variety filed in this country by a person who has, or whose
17 predecessor or successor in title has, previously filed an
18 application for plant variety protection for the same variety
19 by the same breeder in a foreign country which affords simi-
20 lar privileges in the case of applications filed in the United
21 States or to citizens of the United States, shall have the same
22 effect as the same application would have if filed in the
23 United States on the date on which the application for plant
24 variety protection for the same variety was first filed in any
25 foreign country, if the application in this country is filed

1 within twelve months from the earliest date on which such
2 foreign application was filed. No application shall be entitled
3 to a right of priority under this section, unless the applicant
4 designates the foreign application in his application or by
5 amendment thereto and, if required by the Commissioner,
6 furnishes such copy, translation or both, as the Commissioner
7 may specify.

8 (b) An application for a certificate of plant variety pro-
9 tection for the same variety as was the subject of an applica-
10 tion previously filed in the United States by or on behalf
11 of the same proprietor, or by his predecessor in title, shall
12 have the same effect as to such variety as though filed on
13 the date of the prior application if filed before the issuance
14 of the certificate or termination of proceedings on the first
15 application or on an application similarly entitled to the
16 benefit of the filing date of the first application and if it con-
17 tains or is amended to contain a specific reference to the
18 earlier filed application.

19 (c) A later application shall not by itself establish that
20 a characteristic newly described was in the variety at the
21 time of the earlier application.

22 **Sec. 56. Confidential Status of Application.**

23 Applications for plant variety protection and their con-
24 tents shall be kept in confidence by the Plant Variety Pro-
25 tection Office, by the Board, and by the offices in the De-

1 partment of Agriculture to which access may be given under
2 regulations. No information concerning the same shall be
3 given without the authority of the applicant or proprietor,
4 unless necessary under special circumstances as may be de-
5 termined by the Commissioner, except that the Commis-
6 sioner may publish the variety names designated in applica-
7 tions, stating the kind to which each applies.

8 **Sec. 57. Publication.**

9 The Commissioner may establish regulations for the
10 publication of pending applications at the request of the
11 proprietor.

12 **Chapter 6.—EXAMINATION, RESPONSE TIME, INI-**
13 **TIAL APPEALS**

14 **Sec. 61. Examination of Application.**

15 The Commissioner shall cause an examination to be
16 made of the application and if on such examination it is
17 determined that the applicant is entitled to plant variety
18 protection under the law, the Commissioner shall issue a
19 notice of allowance of plant variety protection therefor as
20 hereinafter provided.

21 **Sec. 62. Notice of Refusal; Reconsideration.**

22 (a) Whenever an application is refused, or any objection
23 or requirement made by the examiner, the Commissioner
24 shall notify the applicant thereof, stating the reasons therefor,
25 together with such information and references as may be

1 useful in judging the propriety of continuing the prosecution
2 of the application; and if after receiving such notice the
3 applicant requests reconsideration, with or without amend-
4 ment, the application shall be reconsidered.

5 (b) For taking appropriate action after a refusal, an
6 applicant shall be allowed six months, or such other time as
7 the Commissioner in exceptional circumstances shall set in the
8 refusal, or such time as he may allow as an extension. With-
9 out such extension, action may be taken up to three months
10 late by paying a delayed filing fee.

11 **Sec. 63. Initial Appeal.**

12 When an application for plant variety protection has been
13 refused by the examiner, the applicant may appeal from the
14 decision of the examiner to the Commissioner. The Commis-
15 sioner shall seek the advice of the Plant Variety Protection
16 Board on all appeals, before deciding the appeal.

17 **Chapter 7.—APPEALS TO COURTS AND OTHER** 18 **REVIEW**

19 **Sec. 71. Appeals.**

20 From decisions made on appeal within the Plant Variety
21 Protection Office, and also under the provisions of section 92,
22 appeal may be taken under the Federal Rules of Appellate
23 Procedure. The Court of Customs and Patent Appeals shall
24 have jurisdiction, without limitation to that court.

1 **Sec. 72. Civil Action Against Commissioner.**

2 An applicant dissatisfied with a decision under section 63
3 or 91 of this title, may, as an alternative to appeal, have
4 remedy by civil action against the Commissioner in the
5 United States District Court for the District of Columbia.
6 Such action shall be commenced within sixty days after such
7 decision or within such further time as the Commissioner
8 allows. The court may, in the case of review of a decision by
9 the Commissioner refusing plant variety protection, adjudge
10 that such applicant is entitled to receive a certificate of plant
11 variety protection for his variety as specified in his applica-
12 tion as the facts of the case may appear, on compliance with
13 the requirements of this Act.

14 **Sec. 73. Appeal or Civil Action in Contested Cases.**

15 (a) A party to a proceeding under section 92 of this
16 title, dissatisfied with the decision, may take an appeal under
17 section 71 or may have remedy by civil action if commenced
18 within sixty days after such decision or within such further
19 time as the Commissioner allows. A party contemplating ap-
20 peal as provided herein shall notify any adverse party of his
21 intention and such adverse party, not the Commissioner, shall
22 have the right, by notice served within ten days of the notice
23 to him, to elect that any review shall be by civil action. In
24 such suits the record in the Plant Variety Protection Office
25 shall be admitted on motion of either party upon the terms

1 and conditions as to costs, expenses, and the further cross-
2 examination of witnesses, as the court imposes, without prej-
3 udice to the right of the parties to take further testimony.
4 The testimony and exhibits of the record in the Plant Variety
5 Protection Office when admitted shall have the same effect as
6 if originally taken and produced in the suit.

7 (b) Such suit may be instituted against the party in
8 interest as shown by the record of the Plant Variety Protec-
9 tion Office at the time of the decision complained of, but any
10 party in interest may become a party to the action. If there
11 be adverse parties residing in a plurality of districts not em-
12 braced within the same State, or an adverse party residing
13 in a foreign country, the United States District Court for the
14 District of Columbia, or any United States district court to
15 which it may transfer the case, shall have jurisdiction and
16 may issue summons against the adverse parties directed to
17 the marshal of any district in which any adverse party resides.
18 Summons against adverse parties residing in foreign countries
19 may be served by publication or otherwise as the court
20 directs. The Commissioner shall not be made a party but he
21 shall have the right to intervene. Judgment of the court in
22 favor of the right of an applicant to plant variety protection
23 shall authorize the Commissioner to issue a certificate of plant
24 variety protection on the filing in the Plant Variety Protec-

tion Office of a certified copy of the judgment and on compliance with the requirements of this Act.

Chapter 8.—CERTIFICATES OF PLANT VARIETY PROTECTION

Sec. 81. Plant Variety Protection.

(a) If it appears that the proprietor is entitled to plant variety protection under the law, a written notice of allowance shall be given or mailed to the proprietor. The notice shall specify the sum, constituting the issue fee, which shall be paid within one month thereafter.

(b) Upon timely payment of this sum, and provided that deposit of seed has been made in accordance with section 52 (c), the certificate of plant variety protection shall issue.

(c) If any payment required by this Section is not timely made, but is submitted with the fee for delayed payment within nine months after the due date, or within such further time as the Commissioner may allow, it shall be accepted.

Sec. 82. How Issued.

A certificate of plant variety protection shall be issued in the name of the United States of America under the seal of the Plant Variety Protection Office, and shall be signed by the Commissioner or have his signature placed thereon, and shall be recorded in the Plant Variety Protection Office.

1 **Sec. 83. Contents and Term of Plant Variety Protection.**

2 (a) Every certificate of plant variety protection shall
3 certify that the breeder or proprietor, his heirs or assignees,
4 has the right, during the term of the plant variety protection,
5 to exclude others from selling the variety, or offering it
6 for sale, or reproducing it, or importing it, or exporting it,
7 or using it in producing (as distinguished from developing)
8 a hybrid or different variety therefrom, to the extent pro-
9 vided by this Act. If the proprietor so elects, the certificate
10 shall also specify that in the United States seed of the variety
11 shall be sold by variety name only as a class of certified
12 seed and, if specified, shall also conform to the number of
13 generations designated by the proprietor. Any rights, or all
14 rights except those elected under the preceding sentence,
15 may be waived; and the certificate shall conform to such
16 waiver. The Commissioner may at his discretion permit such
17 election or waiver to be made after certificating and amend
18 the certificate accordingly, without retroactive effect.

19 (b) The term of plant variety protection shall expire
20 seventeen years from the date of issue of the certificate in
21 the United States. If the certificate is not issued within
22 three years from the effective filing date, the Commissioner
23 may shorten the term by the amount of time attributed to
24 the applicant.

1 (c) The term of Plant Variety Protection shall also ex-
2 pire if a proprietor fails to comply with regulations, in force
3 at the time of certificating, relating to replenishing seed in
4 a public repository: *Provided, however,* That this expira-
5 tion shall not occur unless notice is mailed to the proprietor
6 and he fails, within the time allowed thereafter, not less than
7 three months, to comply with said regulations, paying the
8 delayed fee in section 31 (a) (8).

9 **Sec. 84. Certificate of Correction of Plant Variety Protec-**
10 **tion Office Mistake.**

11 Whenever a mistake in certificating a protected plant
12 variety, incurred through the fault of the Plant Variety
13 Protection Office, is clearly disclosed by the records of the
14 Office, the Commissioner may issue a certificate of correc-
15 tion stating the fact and nature of such mistake, under seal,
16 without charge, to be recorded in the records of plant variety
17 protection. A copy thereof shall be attached to each copy
18 of the application of the plant variety protection and such
19 certificate shall be considered as part of the original certifi-
20 cate of plant variety protection. Every such certificate of
21 plant variety protection shall have the same effect and opera-
22 tion in law on the trial of action as if the same had been
23 originally issued in such corrected form. The Commissioner
24 may issue a corrected certificate of plant variety protection

1 without charge in lieu of and with like effect as a certificate
2 of correction.

3 **Sec. 85. Certificate of Correction of Applicant's Mistake.**

4 Whenever a mistake of a clerical or typographical na-
5 ture, or of minor character, or in the description of the
6 variety, which was not the fault of the Plant Variety Pro-
7 tection Office, appears in certificating a plant variety protec-
8 tion and a showing has been made that such mistake oc-
9 curred in good faith, the Commissioner may, upon payment
10 of the required fee, issue a certificate of correction, if the
11 correction unquestionably could have been made before the
12 certificate issued. Such certificate of plant variety protection
13 shall have the same effect and operation in law on the trial
14 of actions for causes thereafter arising as if the same had
15 been originally issued in such corrected form.

16 **Sec. 86. Correction of Named Breeder.**

17 An error as to the naming of a breeder in the applica-
18 tion, without deceptive intent, shall not affect validity of plant
19 variety protection and may be corrected at any time by the
20 Commissioner in accordance with regulations established by
21 him or upon order of a federal court before which the matter
22 is called in question. Upon such correction the Commissioner
23 shall issue a certificate accordingly. Such correction shall not
24 deprive a breeder of any rights he otherwise would have had.

1 **Chapter 9.—REEXAMINATION AFTER ISSUE, AND**
2 **CONTESTED PROCEEDINGS**

3 **Sec. 91. Reexamination After Issue.**

4 (a) Any person may, within five years after the issu-
5 ance of a certificate of plant variety protection, notify the
6 Commissioner in writing of facts which may have a bearing
7 on the protectability of the variety, and the Commissioner
8 may cause such plant variety protection to be reexamined
9 in the light thereof.

10 (b) Reexamination of plant variety protection under
11 this section and appeals shall be pursuant to the same pro-
12 cedures and with the same rights as for original examina-
13 tions. Abandonment of the procedure while subject to a rul-
14 ing against the retention of the certificate shall result in can-
15 cellation of the plant variety certificate thereon and notice
16 thereof shall be endorsed on copies of the specification of the
17 protected plant variety thereafter distributed by the Plant
18 Variety Protection Office.

19 (c) If a person acting under subsection (a), within the
20 time specified above, makes a prima facie showing of facts
21 needing proof, the Commissioner may direct that the reexami-
22 nation include such interparty proceedings as he shall
23 establish.

24 **Sec. 92. Priority Contest.**

25 (a) If the Commissioner determines that two applica-

1 tions of different breeders or proprietors may be based on the
2 same variety, he may:

3 (1) Initiate a priority contest on his own motion
4 whether or not one of the applications may have been
5 certificated; or

6 (2) Issue a certificate on the application having the
7 earliest effective filing date, with notice to all; or

8 (3) Issue a certificate naming both proprietors as
9 alternative owners, under a single variety name accept-
10 able to both.

11 (b) On request of one proprietor when a certificate has
12 been issued naming another proprietor as an owner or alter-
13 native owner, both having applied for protection on the same
14 variety, the Commissioner shall institute a priority contest.
15 except that a proprietor shall have forfeited his right to assert
16 priority for the purpose of obtaining plant variety protection
17 when an adverse certificate has issued if he fails to make the
18 request within one year of the mailing of notice specified in
19 part (2) above or if he fails to make the request within the
20 period for taking action after refusal of his application on the
21 basis of the adverse certificate.

22 **Sec. 93. Effect of Adverse Final Judgment or of Non**
23 **Action.**

24 (a) A final judgment under section 92 adverse to an
25 application from which no appeal or other review had been

1 or can be taken or had shall constitute cancellation of any
2 certifying on that application, and notice thereof shall be
3 endorsed on copies of the specifications of the protected plant
4 variety thereafter distributed by the Plant Variety Protection
5 Office.

6 (b) Any person who has not proceeded in accordance
7 with the provision of this chapter shall not be foreclosed or
8 in any way prejudiced with respect to the defense of an
9 infringement suit or affirmative relief under declaratory judg-
10 ment proceedings.

11 (c) No person subject to an adverse decision in a pro-
12 ceeding under this chapter shall be foreclosed with respect to
13 asserting comparable grounds in defense of an infringement
14 suit or as a basis for affirmative relief under declaratory judg-
15 ment proceedings.

16 **Sec. 94. Interfering Plant Variety Protection.**

17 The proprietor of a certificate of plant variety protection
18 may have relief against another proprietor of a certificate of
19 the same variety, or in case alternate owners are named, by
20 civil action, and the court may adjudge the question of
21 validity of the respective certificates, or the ownership of the

1 certificate. The provisions of section 73 (b) of this title shall
2 apply to actions brought under this section.

3 **TITLE III—PLANT VARIETY PROTECTION**
4 **AND RIGHTS**

Chapter	Section
10. Ownership and Assignment-----	101
11. Infringement of Plant Variety Protection-----	111
12. Remedies for Infringement of Plant Variety Protection, and Other Actions-----	121
13. Intent and Severability-----	131
14. Temporary Provision and Related Enactments-----	141

5 **Chapter 10.—OWNERSHIP AND ASSIGNMENT**

6 **Sec. 101. Ownership and Assignment.**

7 (a) Subject to the provisions of this title, plant variety
8 protection shall have the attributes of personal property.

9 (b) Applications for certificates of plant variety protec-
10 tion, or any interest in a variety, shall be assignable by an
11 instrument in writing. The proprietor may in like manner
12 grant and convey an exclusive right to use of the variety in
13 the whole or any specified part of the United States.

14 (c) A certificate of acknowledgment under the hand
15 and official seal of a person authorized to administer oaths
16 within the United States, or in a foreign country, of a diplo-
17 matic or consular officer of the United States or an officer

1 authorized to administer oaths whose authority is proved by
2 a certificate of a diplomatic or consular officer of the United
3 States, shall be prima facie evidence of the execution of an
4 assignment, grant or conveyance of plant variety protection
5 or application for plant variety protection.

6 (d) An assignment, grant, conveyance or license shall
7 be void as against any subsequent purchaser or mortgagee for
8 a valuable consideration, without notice, unless it, or an
9 acknowledgment by the assignor, and so forth, that there is
10 such encumbrance, is recorded in the Plant Variety Protec-
11 tion Office within one month from its date or one month prior
12 to the date of such subsequent purchase or mortgage.

13 **Sec. 102. Ownership During Testing.**

14 An owner who, with suitable notice, releases possession
15 of seed or other sexually reproducible plant material for
16 testing retains ownership with respect thereto; and any di-
17 version from authorized testing, or any unauthorized reten-
18 tion, of such material by anyone who has knowledge that
19 it is under such notice, or who is chargeable with notice, is
20 prohibited, and violates the property rights of the owner.
21 Anyone receiving the material tagged or labeled with the
22 notice is chargeable with the notice. The owner is entitled
23 to remedy and redress in a civil action hereunder. No remedy
24 available by state or local law is hereby excluded. No such
25 notice shall be used, or if used be effective, when the owner

1 has made identical sexually reproducible plant material
2 available to the public, as by sale thereof.

3 **Chapter 11.—INFRINGEMENT OF PLANT VARIETY**
4 **PROTECTION**

5 **Sec. 111. Infringement of Plant Variety Protection.**

6 Except as otherwise provided in this title, it shall be an
7 infringement of the rights of a proprietor of a novel variety
8 to perform without authority, any of the following acts in
9 the United States, or in commerce which can be regulated by
10 Congress or affecting such commerce, prior to expiration of
11 the right to plant variety protection but after either the issue
12 of the certificate or the distribution of a novel plant variety
13 with the notice under section 127:

14 (1) sell the novel variety, or offer it or expose it for
15 sale, deliver it, ship it, consign it, exchange it, or solicit
16 an offer to buy it, or any other transfer of title or pos-
17 session of it; except as otherwise provided herein;

18 (2) import the novel variety into, or export it from,
19 the United States;

20 (3) multiply the novel variety as a step in market-
21 ing (for growing purposes) the variety; or

22 (4) use the novel variety in producing (as dis-
23 tinguished from developing) a hybrid or different va-
24 riety therefrom; or

25 (5) use seed which had been marked "propaga-

tion prohibited" or progeny thereof to propagate the novel variety; or

(6) dispense the novel variety to another, in a form which can be propagated, without notice as to being a protected variety under which it was received; or

(7) perform any of the foregoing acts even in instances in which the novel variety is multiplied other than sexually; or

(8) instigate or actively induce performance of any of the foregoing acts.

Sec. 112. Right To Save Seed.

Except under subsections (3) and (4) of section 111, it shall not infringe any right hereunder for a person to save seed and grow the resulting variety for his own use.

Sec. 113. Private Defense Against Delayed Application.

No plant variety protection under this Act shall abridge the rights of any person who had developed a variety or his successor in business to produce, reproduce or sell his own variety, beginning more than one year prior to the effective filing date of an adverse application for a certificate of plant variety protection.

Sec. 114. Crop Exemption.

It shall not be an infringement to sell seed grown from the protected variety, obtained (for growing) by authority of the proprietor or by saving seed under section 112, for use

1 as food, feed, in manufacture or the like, if the sale is bona
2 fide for that purpose, and is in channels which are usual for
3 that purpose and in a manner exclusively for that purpose. A
4 purchaser who diverts such seed from those channels to grow-
5 ing purposes shall not be entitled to any benefit for lack of
6 notice under section 127.

7 **Sec. 115. Research Exemption.**

8 The use and reproduction of a protected variety for plant
9 breeding or other bona fide research shall not constitute an
10 infringement of the protection provided under this Act.

11 **Sec. 116. Intermediary Exemption.**

12 It shall not be an infringement to deliver, ship, consign
13 or other acts of transport or change of possession when per-
14 formed by a mere carrier or other innocent intermediaries, or
15 to offer for sale by an innocent advertising medium.

16 **Chapter 12.—REMEDIES FOR INFRINGEMENT OF**
17 **PLANT VARIETY PROTECTION, AND OTHER**
18 **ACTIONS**

19 **Sec. 121. Remedy for Infringement of Plant Variety Pro-**
20 **tection.**

21 A proprietor shall have remedy by civil action for in-
22 fringement of his plant variety protection under section 111.
23 If a variety is sold under the name of a proprietor's variety as
24 shown in his certificate, there is a prima facie presumption
25 that it is the same variety.

1 **Sec. 122. Presumption of Validity; Defenses.**

2 (a) Certificates of plant variety protection shall be pre-
3 sumed valid. The burden of establishing invalidity of a plant
4 variety protection shall rest on the party asserting invalidity.

5 (b) The following shall be defenses in any action charg-
6 ing infringement and shall be pleaded: (1) Noninfringement,
7 absence of liability for infringement, or unenforceability; (2)
8 Invalidity of the plant variety protection in suit on any
9 ground specified in section 42 of this title as a condition for
10 protectability; (3) Invalidity of the plant variety protection
11 in suit for failure to comply with any requirement of section
12 52; (4) That the asserted infringement was performed un-
13 der an existing certificate adverse to that asserted and prior
14 to notice of the infringement; and (5) Any other fact or
15 act made a defense by this Act.

16 **Sec. 123. Injunction.**

17 The several courts having jurisdiction of cases under this
18 title may grant injunctions in accordance with the principles
19 of equity to prevent the violation of any right hereunder on
20 such terms as the court deems reasonable.

21 **Sec. 124. Damages.**

22 (a) Upon finding for the proprietor the court shall
23 award damages adequate to compensate for the infringement
24 but in no event less than a reasonable royalty for the use

1 made of the variety by the infringer, together with interest
2 and costs as fixed by the court.

3 (b) When the damages are not determined by the jury,
4 the court shall determine them. In either event the court may
5 increase the damages up to three times the amount deter-
6 mined.

7 (c) The court may receive expert testimony as an aid
8 to the determination of damages or of what royalty would
9 be reasonable under the circumstances.

10 (d) As to infringement prior to, or resulting from a
11 planting prior to, issuance of a certificate for the infringed
12 variety, a court finding the infringer to have established
13 innocent intentions, shall have discretion as to awarding
14 damages.

15 **Sec. 125. Attorney Fees.**

16 The court in exceptional cases may award reasonable
17 attorney fees to the prevailing party.

18 **Sec. 126. Time Limitation on Damages.**

19 (a) No recovery shall be had for any infringement
20 committed more than six years (or three years with knowl-
21 edge of the proprietor) prior to the filing of the complaint
22 or counterclaim for infringement in the action.

23 (b) In the case of claims against the United States
24 Government for unauthorized use of a protected variety, the

1 period before bringing suit, up to six years, between the date
2 of receipt of written claim for compensation by the depart-
3 ment or agency of the Government having authority to settle
4 such claim, and the date of mailing by the Government of a
5 notice to the claimant that his claim has been denied shall
6 not be counted as part of the period referred to in the pre-
7 ceding paragraph.

8 **Sec. 127. Limitation of Damages; Marking and Notice.**

9 Proprietors may give notice to the public by physically
10 associating with or affixing to the container of seed of a novel
11 variety or by fixing to the novel variety, a label containing
12 the words "Propagation Prohibited" and after the certificate
13 issues, such additional words as "U.S. Protected Variety."
14 In the event the novel variety is distributed by authorization
15 of the proprietor and is received by the infringer without
16 such marking, no damages shall be recovered against such
17 infringer by the proprietor in any action for infringement,
18 except on proof that the infringer was notified of the in-
19 fringement and continued to infringe thereafter, in which
20 event damages may be recovered only for infringement oc-
21 curring after such notice. As to both damages and injunc-
22 tion, a court shall have discretion to be lenient as to disposal
23 of materials acquired in good faith by acts prior to such
24 notice.

1 Sec. 128. False Marking.

2 (a) Each of the following acts, if performed in connec-
3 tion with the sale, offering for sale, or advertising of sexually
4 reproducible plant material, is prohibited, and the Commis-
5 sioner may, if he determines after an opportunity for hear-
6 ing that the act is being so performed, issue an order to
7 cease and desist, said order being binding unless appealed
8 under the Federal Rules of Appellate Procedure:

9 (1) Use of the words "U.S. Protected Variety"
10 or any word or number importing that the material is
11 a variety protected under certificate, when it is not.

12 (2) Use of any wording importing that the ma-
13 terial is a variety for which an application for plant
14 variety protection is pending, when it is not.

15 (3) Use of the phrase "propagation prohibited" or
16 similar phrase without reasonable basis, a statement of
17 this basis being promptly filed with the Commissioner if
18 the phrase is used beyond experimental testing and no
19 application has been filed. Any reasonable basis expires
20 one year after commencement of use of the phrase be-
21 yond experimental testing except as justified thereafter
22 by a pending application or a certificate still in force.

23 (b) Anyone convicted of violating a binding cease and
24 desist order, or of performing any act prohibited in sub-

1 section (a) of this section for the purpose of deceiving the
2 public, shall be fined not more than \$10,000 and not less
3 than \$500.

4 (c) Anyone whose business is damaged or is likely to
5 be damaged by an act prohibited in subsection (a) of this
6 section, or is subjected to competition in connection with
7 which such act is performed, may have remedy by civil
8 action.

9 **Sec. 129. Nonresident Proprietors; Service and Notice.**

10 Every proprietor not residing in the United States may
11 file in the Plant Variety Protection Office a written design-
12 nation stating the name and address of a person residing
13 within the United States on whom may be served process
14 or notice of proceedings affecting the plant variety protec-
15 tion or rights thereunder. If the person designated cannot
16 be found at the address given in the last designation, or if
17 no person has been designated, the United States District
18 Court for the District of Columbia shall have jurisdiction
19 and summons shall be served by publication or otherwise as
20 the court directs. The court shall have the same jurisdiction
21 to take any action respecting the plant variety protection, or
22 rights thereunder that it would have if the proprietor were
23 personally within the jurisdiction of the court.

Chapter 13.—INTENT AND SEVERABILITY

Sec. 131. Intent.

It is the intent of Congress to provide the indicated protection for new varieties by exercise of any constitutional power needed for that end, so as to afford adequate encouragement for research, and for marketing when appropriate, to yield for the public the benefits of new varieties. Constitutional clauses 3 and 8 of article I, section 8 are both relied upon.

Sec. 132. Severability.

If this Act is held unconstitutional as to some provisions or circumstances, it shall remain in force as to the remainder or with necessary implied limitations as to other circumstances, except that in no event may a provision, because a stated exemption from that provision is invalid, be effective in the area of that exemption.

Chapter 14.—TEMPORARY PROVISION AND RELATED ENACTMENTS

Sec. 141. Effective Date.

The foregoing Act shall take effect upon approval. Applications may be filed with the Secretary and held by him until the Office of Plant Variety Protection is organized and in operation.

1 **Sec. 142. Amendment of Federal Seed Act.**

2 The Federal Seed Act (53 Stat. 1275) is amended as
3 follows:

4 (a) By adding at the end thereof:

5 **“TITLE V—SALE OF UNCERTIFIED SEED OF**
6 **PROTECTED VARIETY**

7 **“Section 501.**

8 (a) It shall be unlawful in the United States or in inter-
9 state or foreign commerce to sell by variety name seed not
10 certified by an official seed certifying agency when it is a
11 variety for which a certificate of plant variety protection
12 under the Plant Variety Protection Act specifies sale only
13 as a class of certified seed: *Provided*, That such seed may
14 be labeled as to variety name when used in a mixture by, or
15 with the approval of, the proprietor of the variety.”

16 (b) By adding at the end of section 102 the following
17 wording: Seed shall be certified only when the basic seed
18 from which a variety was produced was furnished by the
19 originator of the variety, his successor in title, and, when
20 specified, conforms to the number of generations designated
21 by the originator.

22 **Sec. 143. Amendment of Judicial Code.**

23 Title 28 of the United States Code, entitled Judicial
24 Code and Judiciary, is amended as follows:

25 (a) After section 1544 add:

1 **Sec. 1545. Decision of the Plant Variety Protection Office.**

2 The Court of Customs and Patent Appeals shall have
3 nonexclusive jurisdiction to review by appeal decisions of
4 the Plant Variety Protection Office, provided that the deci-
5 sion appealed from is on appeal within the Plant Variety
6 Protection Office, if such appeal is permitted.

7 (b) In section 1338 after “Patents” in the hearing,
8 after “patents” and after “patent” (both occurrences) insert
9 “, plant variety protection.”

A BILL

To encourage the development of novel varieties of sexually reproduced plants and making them available to the public, by making protection available to those who breed, develop or discover them, thereby promoting progress in the useful art of agriculture.

By Mr. PURCELL, Mr. HORTON, Mr. LEGGETT, Mr. HUNGATE, Mr. TEAGUE of Texas, Mr. DORN, Mr. ABERNETHY, Mr. FISHER, Mr. TAYLOR, Mr. BIESTER, Mr. HANSEN of Idaho, Mr. WYNN, Mr. SCHERLE, Mr. DADDARIO, Mr. MAHON, Mrs. REID of Illinois, Mr. ZABLOCKI, Mr. SMITH of Iowa, Mr. MICHEL, Mr. MONTGOMERY, Mr. BROWN of Ohio, Mr. GONZALEZ, Mr. TEAGUE of California, and Mrs. MAY

SEPTEMBER 4, 1969

Referred to the Committee on Agriculture

91ST CONGRESS
1ST SESSION

S. 3070

IN THE SENATE OF THE UNITED STATES

OCTOBER 23, 1969

Mr. MILLER (for himself, Mr. DOLE, Mr. EASTLAND, Mr. HOLLINGS, Mr. JORDAN of North Carolina, and Mr. YOUNG of North Dakota) introduced the following bill; which was read twice and referred to the Committee on Agriculture and Forestry

A BILL

To encourage the development of novel varieties of sexually reproduced plants and to make them available to the public, providing protection available to those who breed, develop, or discover them, and thereby promoting progress in agriculture in the public interest.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **TITLE I—PLANT VARIETY PROTECTION**
2 **OFFICE**

3 Chapter 1.—ORGANIZATION AND PUBLICATIONS

4 Section 1. Establishment.

5 There is hereby established in the Department of Agri-
6 culture a bureau to be known as the Plant Variety Protec-
7 tion Office, which shall have the functions set forth in this
8 Act.

9 Sec. 2. Seal.

10 The Plant Variety Protection Office shall have a seal
11 with which documents and certificates evidencing plant
12 variety protection shall be authenticated.

13 **Sec. 3. Officers and Employees.**

(a) There shall be in the Plant Variety Protection Office a Commissioner of Plant Variety Protection, one Assistant Commissioner, and an appropriate staff. The Assistant Commissioner shall perform the duties pertaining to the office of Commissioner assigned to him by the Commissioner and shall fill the office of Commissioner during a vacancy in that office or in the absence of the Commissioner. The Com-

1 missioner of Plant Variety Protection shall be appointed by
2 the Secretary.

3 (b) The Secretary is authorized to fix the per annum
4 rate of basic compensation of each staff member in the Plant
5 Variety Protection Office at not in excess of the maximum
6 scheduled rate provided for positions in level V of section
7 5316 of title 5, United States Code.

8 **Sec. 4. Restrictions on Employees as to Interest in Plant**
9 **Variety Protection.**

10 Employees of the Plant Variety Protection Office, in-
11 cluding the Commissioner and Assistant Commissioner, shall
12 be ineligible during the periods of their employment, to apply
13 for plant variety protection and to acquire directly or in-
14 directly, except by inheritance or bequest, any right or
15 interest in any matters before that office. This section shall
16 not apply to members of the Plant Variety Protection Board
17 who are not otherwise employees of the Plant Variety
18 Protection Office.

19 **Sec. 5. Bond of Commissioner and Employees.**

20 The Commissioner and such other employees as he des-
21 ignates, before entering upon their duties, shall severally give
22 bond, with sureties, the former in the sum of \$10,000, and
23 the latter in sums prescribed by the Commissioner, condi-
24 tioned for the faithful discharge of their respective duties and
25 that they shall render to the proper officers of the Treasury

1 a true account of all money received by virtue of their
2 offices.

3 **Sec. 6. Duties of Commissioner, Regulations.**

4 The Commissioner, who shall report directly to the Sec-
5 retary, shall superintend or perform all duties required here-
6 under, and he shall have charge of property belonging to
7 the Plant Variety Protection Office. He may establish regula-
8 tions, not inconsistent with law, for the conduct of proceed-
9 ings in the Plant Variety Protection Office after consultations
10 with the Plant Variety Protection Board. All regulations
11 issued pursuant to this title shall be subject to the approval of
12 the Secretary.

13 **Sec. 7. Plant Variety Protection Board.**

14 (a) APPOINTMENT.—The Secretary shall appoint a
15 Plant Variety Protection Board. The Board shall consist
16 of individuals who, as a group, are expert in various areas of
17 varietal development covered by this Act. Membership of
18 the Board shall be drawn approximately equally from the
19 private or seed industry sector and from the sector of govern-
20 ment or the public. The Commissioner or his designee shall
21 act as chairman of the Board without voting rights except
22 in the case of ties.

23 (b) FUNCTIONS OF BOARD.—The functions of the Plant
24 Variety Protection Board shall include:

25 (1) Advising the Commissioner concerning the

1 adoption of Rules and Regulations to facilitate the proper
2 administration of this Act;

3 (2) Making advisory decisions on all appeals from
4 the Examiner. The Board shall determine whether to
5 act as a full Board or by panels it selects; and whether
6 to review advisory decisions made by a panel. For serv-
7 ice on such appeals, the Board may select, as temporary
8 members, experts in the area to which the particular
9 appeal relates; and

10 (3) Advising the Secretary on all questions under
11 section 44.

12 (c) COMPENSATION OF BOARD.—The members of the
13 Plant Variety Protection Board shall serve without compen-
14 sation except for standard government reimbursable expenses.

15 **Sec. 8. Library.**

16 The Commissioner shall maintain a library of scientific
17 and other works and periodicals, both foreign and domestic,
18 in the Plant Variety Protection Office to aid the officers in
19 the discharge of their duties.

20 **Sec. 9. Register of Protected Plant Varieties.**

21 The Commissioner shall maintain a register of published
22 specifications of United States protected plant varieties and
23 a file of such other scientific and technical information as may
24 be necessary or practicable.

1 **Sec. 10. Publications.**

2 (a) The Commissioner may publish, or cause to be pub-
3 lished, in such format as he shall determine to be suitable, the
4 following:

5 (1) The specifications for plant variety protection
6 including drawings and photographs.

7 (2) The Official Journal of the Plant Variety Pro-
8 tection Office, including annual indices.

9 (3) Pamphlet copies of the plant variety protection
10 laws and rules of practice and circulars or other publica-
11 tions relating to the business of the Office.

12 (b) The Plant Variety Protection Office may print the
13 heading of the drawings or photographs for protected plant
14 varieties for the purpose of photolithography and any lithog-
15 raphy to appear on the same page.

16 (c) The Commissioner may (1) establish public facili-
17 ties for the searching of plant variety protection records and
18 materials, and (2) from time to time, as through an informa-
19 tion service, disseminate to the public those portions of the
20 technological and other public information available to or
21 within the Plant Variety Protection Office to encourage inno-
22 vation and promote the progress of the useful arts.

23 (d) The Commissioner may exchange any of the pub-
24 lications specified for publications desirable for the use of the

1 Plant Variety Protection Office. The Commissioner may
2 exchange copies of specifications, drawings, and photographs
3 of United States protected plant varieties for copies of speci-
4 fications, drawings, and photographs of applications and pro-
5 tected plant varieties of foreign countries.

6 **Sec. 11. Copies for Public Libraries.**

7 The Commissioner may supply printed copies of speci-
8 fications, drawings, and photographs of protected plant varie-
9 ties to public libraries in the United States which shall main-
10 tain such copies for the use of the public.

11 **Chapter 2.—LEGAL PROVISIONS AS TO THE PLANT**
12 **VARIETY PROTECTION OFFICE**

13 **Sec. 21. Day for Taking Action Falling on Saturday, Sun-**
14 **day, or Holiday.**

15 When the day, or the last day, for taking any action or
16 paying any fee in the United States Plant Variety Protection
17 Office falls on Saturday, Sunday, a holiday within the District
18 of Columbia, or on any other day the Plant Variety Protec-
19 tion Office is closed for the receipt of papers, the action may
20 be taken or the fee paid, on the next succeeding business day.

21 **Sec. 22. Form of Papers Filed.**

22 The Commissioner may by regulations prescribe the form
23 of papers to be filed in the Plant Variety Protection Office.

1 **Sec. 23. Testimony in Plant Variety Protection Office**
2 **Cases.**

3 The Commissioner may establish regulations for taking
4 affidavits, depositions, and other evidence required in cases
5 before the Plant Variety Protection Office. Any officer author-
6 ized by law to take depositions to be used in the courts of the
7 United States, or of the State where he resides, may take such
8 affidavits and depositions, and swear the witnesses. If any
9 person acts as a hearing officer by authority of the Commis-
10 sioner, he shall have like power.

11 **Sec. 24. Subpoenas, Witnesses.**

12 (a) The clerk of any United States court for the district
13 wherein testimony is to be taken in accordance with regula-
14 tions established by the Commissioner for use in any con-
15 tested case in the Plant Variety Protection Office shall, upon
16 the application of any party thereof, issue a subpoena for any
17 witness residing or being within such district or within one
18 hundred miles of the stated place in such district, command-
19 ing him to appear and testify before an officer in such
20 district authorized to take depositions and affidavits, at the
21 time and place stated in the subpoena. The provisions of the
22 Federal Rules of Civil Procedure relating to the attendance
23 of witnesses and the production of documents and things shall
24 apply to contested cases in the Plant Variety Protection
25 Office insofar as consistent with such regulations.

1 (b) Every witness subpoenaed or in attendance shall be
2 allowed the fees and traveling expenses allowed to witnesses
3 attending the United States district courts.

4 (c) A judge of a court whose clerk issued a subpoena
5 may enforce obedience to the process or punish disobedience
6 as in other like cases, on proof that a witness, served with
7 such subpoena, neglected or refused to appear or to testify.
8 No witness shall be deemed guilty of contempt for disobeying
9 such subpoena unless his fees and traveling expenses in going
10 to, and returning from, one day's attendance at the place
11 of examination, are paid or tendered him at the time of the
12 service of the subpoena; nor for refusing to disclose any
13 secret matter except upon appropriate order of the court
14 which issued the subpoena.

15 **Sec. 25. Effect of Defective Execution.**

16 Any document to be filed in the Plant Variety Protec-
17 tion Office and which is required by any law or regulation to
18 be executed in a specified manner may be provisionally ac-
19 cepted by the Commissioner despite a defective execution,
20 provided a properly executed document is submitted within
21 such time as may be prescribed.

22 **Sec. 26. Regulations for Practice Before the Office.**

23 The Commissioner, subject to the approval of the Secre-
24 tary, may prescribe regulations governing the recognition

1 and conduct of persons representing applicants or other par-
2 ties before the Plant Variety Protection Office. The Com-
3 missioner may, after notice and opportunity for a hearing
4 suspend or exclude, either generally or in any particular
5 case, from further practice before the Office of Plant Variety
6 Protection any person shown to be incompetent or disrepu-
7 table or guilty of gross misconduct.

8 **Sec. 27. Unauthorized Practice.**

9 Anyone who engages in direct or indirect practice before
10 the Office of Plant Variety Protection while suspended or
11 excluded under section 26, or without being either authorized
12 to practice law where he maintains his office, or authorized
13 by the Commissioner on the basis of having established his
14 ability and character, shall be liable in a civil action for the
15 return of all money received, and for compensation for
16 damage done by such person and also may be enjoined from
17 such practice. However there shall be no liability for damage
18 if such person establishes that the work was done competently
19 and without negligence. This section does not apply to any-
20 one who, without a claim of self-sufficiency, works under
21 the supervision of another, who is thus authorized and is
22 the responsible party; nor to anyone who establishes that
23 he acted only on behalf of any employer by whom he was
24 regularly employed.

1 Chapter 3.—PLANT VARIETY PROTECTION FEES

2 Sec. 31. Plant Variety Protection Fees.

3 (a) The Commissioner shall charge the following fees:

4 (1) On filing each application for a certificate of
5 plant variety protection, \$50.

6 (2) For issuing each certificate of plant variety
7 protection, \$50 unless the drawing or photograph to be
8 reproduced is in color and in that event, \$75.

9 (3) On appeal under section 63 of this title, for
10 the first time from the examiner to the Plant Variety
11 Protection Board, \$50. In addition, when consideration
12 by the Plant Variety Protection Board is reached, \$50.

13 (4) For certificate under section 85 or under sec-
14 tion 86 of this title, \$15.

15 (5) As available: For uncertified copies of specifi-
16 cation, drawing, and photographs which have been pub-
17 lished, such fees and charges as the Commissioner may
18 establish.

19 (6) For recording every assignment, agreement,
20 or other paper relating to the property in a plant variety
21 protection application, \$10: where the document re-
22 lates to more than one plant variety protection applica-
23 tion, \$1 for each additional item.

1 (7) For each certificate certifying copies of records,
2 \$1.

3 (8) For delayed payment or other action when
4 permitted upon payment of special fee, \$10.

5 (b) The Commissioner may reduce any fees under this
6 section found to be in excess of direct costs.

7 (c) The Commissioner may establish charges for copies
8 of records, publications, or services furnished by the Plant
9 Variety Protection Office, not specified above.

10 **Sec. 32. Payment of Plant Variety Protection Fees; Re-**
11 **turn of Excess Amounts.**

12 All fees shall be paid to the Commissioner, who shall
13 deposit the same in the Treasury of the United States in
14 such manner as the Secretary of the Treasury directs, and
15 the Commissioner may refund any sum paid by mistake
16 or in excess of the fee required.

17 **TITLE II—PROTECTABILITY OF PLANT**
18 **VARIETIES AND CERTIFICATES OF PRO-**
19 **TECTION**

Chapter	Section
4. Protectability of Plant Varieties.....	41
5. Applications: Form, Who May File, Relating Back, Confiden- tiality	51
6. Examination: Response Time, Initial Appeals.....	61
7. Appeals to Courts and Other Review.....	71
8. Certificates of Plant Variety Protection.....	81
9. Reexamination after Issue, and Contested Proceedings.....	91

1 **Chapter 4.—PROTECTABILITY OF PLANT**
2 **VARIETIES**

3 **Sec. 41. Definitions and Rules of Construction.**

4 The definitions and rules of construction set forth in this
5 section apply for the purposes of this title.

6 (a) The term “novel variety” may be represented by,
7 without limitation, seed, transplants, clones, and plants, and
8 is satisfied if there is:

9 (1) Distinctness in the sense that the variety clearly
10 differs by one or more identifiable morphological, physio-
11 logical or other characteristics, as to which a difference in
12 genealogy may contribute evidence, from all prior varie-
13 ties of public knowledge at the date of determination
14 within the provisions of section 42; and

15 (2) Uniformity in the sense that any variations are
16 describable, predictable and commercially acceptable;
17 and

18 (3) Stability in the sense that the variety may be
19 sexually reproduced with its distinctive characteristics,
20 with a reasonable degree of reliability, or to a degree
21 comparable to that of other varieties of the same kind.

22 (b) The terms “United States” and “this country”

1 mean the United States of America, its territories and posses-
2 sions, and the Commonwealth of Puerto Rico.

3 (c) The term "effective filing date," includes the filing
4 date to which an application for plant variety protection is
5 entitled under the provisions of section 55 of this title.

6 (d) The term "effective filing date actually in the United
7 States," means the earliest filing date to which an application
8 for plant variety protection is entitled under the provisions of
9 section 55 (b) of this title, excluding section 55 (a).

10 (e) The term "kind" means one or more related species
11 or subspecies singly or collectively known by one common
12 name, for example, soybean, flax, carrot, or radish.

13 (f) The term "date of determination" means the date
14 when there has been at least tentative determination that the
15 variety has been sexually reproduced with recognized char-
16 acteristics making it a novel variety, whether or not the
17 novelty thereof has been determined.

18 (g) The terms "breeder" and "discoverer" shall each
19 include the other as shall the terms "breed," "develop" and
20 "discover". The breeders or discoverers are those who direct
21 the final breeding, creating the novel variety or discover the
22 novel variety and, in either case, direct the determination
23 required by subsection (f).

24 (h) The term "sexually reproduced" shall include re-

1 peated sexual production through the reproduction system
2 designated by the breeder.

3 (i) The term “proprietor” when distinguished from
4 “breeder” means the employer when the breeder’s work was
5 done for hire without contrary agreement, or other owner
6 by assignment or operation of law; but otherwise may in-
7 clude the applicant until his position is taken by his successor
8 in title, after which, the term “applicant” may mean
9 proprietor.

10 (j) The term “basic seed” means the seed planted to
11 produce certified or commercial seed.

12 (k) The term “testing” includes the period during
13 which there is testing of seed or other sexually reproducible
14 plant material, before any sale thereof, even though such
15 material may be given out, provided the purpose is for ex-
16 perimental testing on behalf of the proprietor, with observa-
17 tion by or reported to the proprietor (even though the crop
18 is used or sold for other than seed).

19 (l) The term “public variety” means a variety in this
20 country which is known or used, other than by the breeders
21 and their associates, or on sale; if other than secretly or for
22 the purpose of experimenting or testing; or as individual
23 plants not known to be either sexually self-reproducible or
24 repeatedly producible sexually at will.

1 (m) A variety described in a publication as specified
2 in section 42 (a) is “effectively available to workers in this
3 country” if a source from which it can be purchased is indi-
4 cated in a publication or readily determinable or if the publi-
5 cation teaches how to produce the variety from source-ma-
6 terial available to workers in this country.

7 **Sec. 42. Right to Plant Variety Protection; Plant Varieties**
8 **Protectable.**

9 Whoever is the breeder or the discoverer of any novel
10 variety of sexually reproduced plants, except as excluded in
11 section 45, or his successor in title, shall be entitled to plant
12 variety protection therefor, subject to the conditions and re-
13 quirements of this title unless one of the following bars exists:

14 (1) Before the date of determination thereof by the
15 breeder, or more than one year before the effective filing
16 date of the application therefor, the variety was (A) a
17 public variety in this country, or (B) effectively avail-
18 able to workers in this country and adequately described
19 by a publication reasonably deemed a part of the public
20 technical knowledge in this country which description
21 must include a disclosure of the principal characteristics
22 by which the variety is distinguished.

23 (2) The variety, though not in use or on sale in
24 this country, was in use or on sale elsewhere, other than
25 secretly or for the purpose of experimenting or testing,

1 by or in the knowledge of the applicant or his predeces-
2 sor in title, or their agents or representatives, more than
3 one year before the effective date of the application there-
4 for.

5 (3) An application for protection of the variety
6 based on the same breeders acts, was filed in a foreign
7 country by the proprietor or his privies more than one
8 year before the effective filing date actually in the United
9 States.

10 (4) Another is entitled to an earlier date of de-
11 termination for the variety: *Provided, however,* That the
12 benefit of a date of determination can be lost by not con-
13 tinuing a program of development and testing to com-
14 mercialization.

15 **Sec. 43. Reciprocity Limits.**

16 Protection under the Act shall be limited to proprietors
17 who are nationals of the United States, except where this lim-
18 itation would violate a treaty and except that proprietors
19 who are nationals of a foreign state in which they are dom-
20 icated shall be entitled to so much of the protection here
21 afforded as is afforded by said foreign state to nationals of the
22 United States for the same genus and species.

23 **Sec. 44. Public Interest In Wide Usage.**

24 The Secretary may declare a protected variety open to

1 use on a basis of equitable remuneration to the proprietor,
2 not less than a reasonable royalty, when he determines that
3 such declaration is necessary in order to insure an adequate
4 supply of fiber, food or feed in this country and that the
5 proprietor is not supplying the public needs at a price which
6 may reasonably be deemed fair. Such declaration may be,
7 with or without limitation, with or without designation of
8 what the remuneration is to be; and shall be subject to re-
9 view as under section 71 or 72 (any finding that the price
10 is not reasonable being reviewable), and shall remain in
11 effect not more than two years. In the event litigation is
12 required to collect such remuneration, a higher rate may be
13 allowed by the court.

14 **Sec. 45. Exclusions From Eligibility for Protection.**

15 Protection under this Act shall not be available for:

16 (a) Fungi and Bacteria,

17 (b) Hybrids.

18 **Chapter 5.—APPLICATIONS: FORM, WHO MAY FILE,**
19 **RELATING BACK, CONFIDENTIALITY**

20 **Sec. 51. Application for Recognition of Plant Variety**
21 **Rights.**

22 (a) An application for a certificate of Plant Variety
23 Protection may be filed by either the breeder or the pro-
24 prietor of the variety sought to be protected. The applica-
25 tion shall be made in writing to the Commissioner, shall be

1 signed by or on behalf of the applicant, and shall be accom-
2 panied by the prescribed fee. An application filed by a per-
3 son not the breeder shall state the basis on which it is filed.

4 (b) An error as to the naming of the breeder, without
5 deceptive intent, may be corrected at any time, in accordance
6 with regulation established by the Commissioner.

7 **Sec. 52. Content of Application.**

8 An application for a certificate recognizing plant variety
9 rights shall contain:

10 (1) The name of the variety except that a tempo-
11 rary designation will suffice until the certificate is to be
12 issued.

13 (2) A description of the variety setting forth its
14 novelty and a description of the genealogy and breeding
15 procedure, when known. The Commissioner may require
16 amplification, including the submission of adequate
17 photographs or drawings or plant specimens, if the
18 description is not adequate or as complete as is reason-
19 ably possible, and submission of records or proof of
20 proprietorship or of allegations made in the application.

21 A proprietor may add to or correct the description at
22 any time, before the certificate is issued, upon a showing
23 acceptable to the Commissioner that the revised descrip-
24 tion is retroactively accurate. Courts shall protect others
25 from any injustice which would result. The Commis-

1 sioner may accept records of the originator and of any
2 official seed certifying agency in this country as evidence
3 of stability where applicable.

4 (3) A declaration that a viable sample of basic seed
5 necessary for propagation of the variety will be deposited
6 and replenished periodically in a public repository in
7 accordance with regulations to be established hereunder.

8 This declaration may be added by amendment.

9 **Sec. 53. Joint Breeders.**

10 (a) When two or more persons are the breeders, one
11 (or his successor) may apply, naming the others.

12 (b) The Commissioner, after such notice as he may
13 prescribe, may issue a certificate of plant variety protection
14 to the applicant and such of the other breeders as may have
15 subsequently joined in the application.

16 **Sec. 54. Death or Incapacity of Breeder.**

17 Legal representatives of deceased breeders and of those
18 under legal incapacity may make application for plant vari-
19 ety protection upon compliance with the requirements and
20 on the same terms and conditions applicable to the breeder
21 or proprietor.

22 **Sec. 55. Benefit of Earlier Filing Date.**

23 (a) An application for plant variety protection for a
24 variety filed in this country by a person who has, or whose

1 predecessor or successor in title has, previously filed an
2 application for plant variety protection for the same variety
3 by the same breeder in a foreign country which affords simi-
4 lar privileges in the case of applications filed in the United
5 States or to citizens of the United States, shall have the same
6 effect as the same application would have if filed in the
7 United States on the date on which the application for plant
8 variety protection for the same variety was first filed in any
9 foreign country, if the application in this country is filed
10 within twelve months from the earliest date on which such
11 foreign application was filed. No application shall be entitled
12 to a right of priority under this section, unless the applicant
13 designates the foreign application in his application or by
14 amendment thereto and, if required by the Commissioner,
15 furnishes such copy, translation or both, as the Commissioner
16 may specify.

17 (b) An application for a certificate of plant variety pro-
18 tection for the same variety as was the subject of an applica-
19 tion previously filed in the United States by or on behalf
20 of the same proprietor, or by his predecessor in title, shall
21 have the same effect as to such variety as though filed on
22 the date of the prior application if filed before the issuance
23 of the certificate or termination of proceedings on the first
24 application or on an application similarly entitled to the
25 benefit of the filing date of the first application and if con-

1 tains or is amended to contain a specific reference to the
2 earlier filed application.

3 (c) A later application shall not by itself establish that
4 a characteristic newly described was in the variety at the
5 time of the earlier application.

6 **Sec. 56. Confidential Status of Application.**

7 Applications for plant variety protection and their con-
8 tents shall be kept in confidence by the Plant Variety Pro-
9 tection Office, by the Board, and by the offices in the De-
10 partment of Agriculture to which access may be given under
11 regulations. No information concerning the same shall be
12 given without the authority of the applicant or proprietor,
13 unless necessary under special circumstances as may be de-
14 termined by the Commissioner, except that the Commis-
15 sioner may publish the variety names designated in applica-
16 tions, stating the kind to which each applies.

17 **Sec. 57. Publication.**

18 The Commissioner may establish regulations for the
19 publication of pending applications at the request of the
20 proprietor.

21 **Chapter 6.—EXAMINATION, RESPONSE TIME, INI-** 22 **TIAL APPEALS**

23 **Sec. 61. Examination of Application.**

24 The Commissioner shall cause an examination to be
25 made of the application and if on such examination it is

1 determined that the applicant is entitled to plant variety
2 protection under the law, the Commissioner shall issue a
3 notice of allowance of plant variety protection therefor as
4 hereinafter provided.

5 **Sec. 62. Notice of Refusal; Reconsideration.**

6 (a) Whenever an application is refused, or any objection
7 or requirement made by the examiner, the Commissioner
8 shall notify the applicant thereof, stating the reasons therefor.
9 together with such information and references as may be
10 useful in judging the propriety of continuing the prosecution
11 of the application; and if after receiving such notice the
12 applicant requests reconsideration, with or without amend-
13 ment, the application shall be reconsidered.

14 (b) For taking appropriate action after a refusal, an
15 applicant shall be allowed six months, or such other time as
16 the Commissioner in exceptional circumstances shall set in the
17 refusal, or such time as he may allow as an extension. With-
18 out such extension, action may be taken up to three months
19 late by paying a delayed filing fee.

20 **Sec. 63. Initial Appeal.**

21 When an application for plant variety protection has been
22 refused by the examiner, the applicant may appeal from the
23 decision of the examiner to the Commissioner. The Commis-
24 sioner shall seek the advice of the Plant Variety Protection
25 Board on all appeals, before deciding the appeal.

1 **Chapter 7.—APPEALS TO COURTS AND OTHER**
2 **REVIEW**

3 **Sec. 71. Appeals.**

4 From decisions made on appeal within the Plant Variety
5 Protection Office, and also under the provisions of section 92,
6 appeal may be taken under the Federal Rules of Appellate
7 Procedure. The Court of Customs and Patent Appeals shall
8 have jurisdiction, without limitation to that court.

9 **Sec. 72. Civil Action Against Commissioner.**

10 An applicant dissatisfied with a decision under section 63
11 or 91 of this title, may, as an alternative to appeal, have
12 remedy by civil action against the Commissioner in the
13 United States District Court for the District of Columbia.
14 Such action shall be commenced within sixty days after such
15 decision or within such further time as the Commissioner
16 allows. The court may, in the case of review of a decision by
17 the Commissioner refusing plant variety protection, adjudge
18 that such applicant is entitled to receive a certificate of plant
19 variety protection for his variety as specified in his applica-
20 tion as the facts of the case may appear, on compliance with
21 the requirements of this Act.

22 **Sec. 73. Appeal or Civil Action in Contested Cases.**

23 (a) A party to a proceeding under section 92 of this
24 title, dissatisfied with the decision, may take an appeal under
25 section 71 or may have remedy by civil action if commenced

1 within sixty days after such decision or within such further
2 time as the Commissioner allows. A party contemplating ap-
3 peal as provided herein shall notify any adverse party of his
4 intention and such adverse party, not the Commissioner, shall
5 have the right, by notice served within ten days of the notice
6 to him, to elect that any review shall be by civil action. In
7 such suits the record in the Plant Variety Protection Office
8 shall be admitted on motion of either party upon the terms
9 and conditions as to costs, expenses, and the further cross-
10 examination of witnesses, as the court imposes, without prej-
11 udice to the right of the parties to take further testimony.
12 The testimony and exhibits of the record in the Plant Variety
13 Protection Office when admitted shall have the same effect as
14 if originally taken and produced in the suit.

15 (b) Such suit may be instituted against the party in
16 interest as shown by the record of the Plant Variety Protec-
17 tion Office at the time of the decision complained of, but any
18 party in interest may become a party to the action. If there
19 be adverse parties residing in a plurality of districts not em-
20 braced within the same State, or an adverse party residing
21 in a foreign country, the United States District Court for the
22 District of Columbia, or any United States district court to
23 which it may transfer the case, shall have jurisdiction and
24 may issue summons against the adverse parties directed to
25 the marshal of any district in which any adverse party resides.

1 Summons against adverse parties residing in foreign countries
2 may be served by publication or otherwise as the court
3 directs. The Commissioner shall not be made a party but he
4 shall have the right to intervene. Judgment of the court in
5 favor of the right of an applicant to plant variety protection
6 shall authorize the Commissioner to issue a certificate of plant
7 variety protection on the filing in the Plant Variety Protec-
8 tion Office of a certified copy of the judgment and on com-
9 pliance with the requirements of this Act.

10 **Chapter 8.—CERTIFICATES OF PLANT VARIETY**
11 **PROTECTION**

12 **Sec. 81. Plant Variety Protection.**

13 (a) If it appears that the proprietor is entitled to plant
14 variety protection under the law, a written notice of allow-
15 ance shall be given or mailed to the proprietor. The notice
16 shall specify the sum, constituting the issue fee, which shall
17 be paid within one month thereafter.

18 (b) Upon timely payment of this sum, and provided
19 that deposit of seed has been made in accordance with sec-
20 tion 52 (c), the certificate of plant variety protection shall
21 issue.

22 (c) If any payment required by this section is not
23 timely made, but is submitted with the fee for delayed
24 payment within nine months after the due date, or within
25 such further time as the Commissioner may allow, it shall
26 be accepted.

1 **Sec. 82. How Issued.**

2 A certificate of plant variety protection shall be issued
3 in the name of the United States of America under the seal
4 of the Plant Variety Protection Office, and shall be signed
5 by the Commissioner or have his signature placed thereon,
6 and shall be recorded in the Plant Variety Protection Office.

7 **Sec. 83. Contents and Term of Plant Variety Protection.**

8 (a) Every certificate of plant variety protection shall
9 certify that the breeder or proprietor, his heirs or assignees,
10 has the right, during the term of the plant variety protection,
11 to exclude others from selling the variety, or offering it
12 for sale, or reproducing it, or importing it, or exporting it,
13 or using it in producing (as distinguished from developing)
14 a hybrid or different variety therefrom, to the extent pro-
15 vided by this Act. If the proprietor so elects, the certificate
16 shall also specify that in the United States seed of the variety
17 shall be sold by variety name only as a class of certified
18 seed and, if specified, shall also conform to the number of
19 generations designated by the proprietor. Any rights, or all
20 rights except those elected under the preceding sentence,
21 may be waived; and the certificate shall conform to such
22 waiver. The Commissioner may at his discretion permit such
23 election or waiver to be made after certificating and amend
24 the certificate accordingly, without retroactive effect.

25 (b) The term of plant variety protection shall expire

1 seventeen years from the date of issue of the certificate in
2 the United States. If the certificate is not issued within
3 three years from the effective filing date, the Commissioner
4 may shorten the term by the amount of time attributed to
5 the applicant.

6 (c) The term of Plant Variety Protection shall also ex-
7 pire if a proprietor fails to comply with regulations, in force
8 at the time of certificating, relating to replenishing seed in
9 a public repository: *Provided, however,* That this expira-
10 tion shall not occur unless notice is mailed to the proprietor
11 and he fails, within the time allowed thereafter, not less than
12 three months, to comply with said regulations, paying the
13 delayed fee in section 31 (a) (8).

14 **Sec. 84. Certificate of Correction of Plant Variety Protec-**
15 **tion Office Mistake.**

16 Whenever a mistake in certificating a protected plant
17 variety, incurred through the fault of the Plant Variety
18 Protection Office, is clearly disclosed by the records of the
19 Office, the Commissioner may issue a certificate of correc-
20 tion stating the fact and nature of such mistake, under seal,
21 without charge, to be recorded in the records of plant variety
22 protection. A copy thereof shall be attached to each copy
23 of the application of the plant variety protection and such
24 certificate shall be considered as part of the original certifi-
25 cate of plant variety protection. Every such certificate of

1 plant variety protection shall have the same effect and opera-
2 tion in law on the trial of action as if the same had been
3 originally issued in such corrected form. The Commissioner
4 may issue a corrected certificate of plant variety protection
5 without charge in lieu of and with like effect as a certificate
6 of correction.

7 **Sec. 85. Certificate of Correction of Applicant's Mistake.**

8 Whenever a mistake of a clerical or typographical na-
9 ture, or of minor character, or in the description of the
10 variety, which was not the fault of the Plant Variety Pro-
11 tection Office, appears in certificating a plant variety protec-
12 tion and a showing has been made that such mistake oc-
13 curred in good faith, the Commissioner may, upon payment
14 of the required fee, issue a certificate of correction, if the
15 correction unquestionably could have been made before the
16 certificate issued. Such certificate of plant variety protection
17 shall have the same effect and operation in law on the trial
18 of actions for causes thereafter arising as if the same had
19 been originally issued in such corrected form.

20 **Sec. 86. Correction of Named Breeder.**

21 An error as to the naming of a breeder in the applica-
22 tion, without deceptive intent, shall not affect validity of plant
23 variety protection and may be corrected at any time by the
24 Commissioner in accordance with regulations established by

1 him or upon order of a federal court before which the matter
2 is called in question. Upon such correction the Commissioner
3 shall issue a certificate accordingly. Such correction shall not
4 deprive a breeder of any rights he otherwise would have had.

5 **Chapter 9.—REEXAMINATION AFTER ISSUE, AND**
6 **CONTESTED PROCEEDINGS**

7 **Sec. 91. Reexamination After Issue.**

8 (a) Any person may, within five years after the issu-
9 ance of a certificate of plant variety protection, notify the
10 Commissioner in writing of facts which may have a bearing
11 on the protectability of the variety, and the Commissioner
12 may cause such plant variety protection to be reexamined
13 in the light thereof.

14 (b) Reexamination of plant variety protection under
15 this section and appeals shall be pursuant to the same pro-
16 cedures and with the same rights as for original examina-
17 tions. Abandonment of the procedure while subject to a rul-
18 ing against the retention of the certificate shall result in can-
19 cellation of the plant variety certificate thereon and notice
20 thereof shall be endorsed on copies of the specification of the
21 protected plant variety thereafter distributed by the Plant
22 Variety Protection Office.

23 (c) If a person acting under subsection (a), within the
24 time specified above, makes a prima facie showing of facts
25 needing proof, the Commissioner may direct that the reexami-

1 nation include such interparty proceedings as he shall
2 establish.

3 **Sec. 92. Priority Contest.**

4 (a) If the Commissioner determines that two applica-
5 tions of different breeders or proprietors may be based on the
6 same variety, he may:

7 (1) Initiate a priority contest on his own motion
8 whether or not one of the applications may have been
9 certificated; or

10 (2) Issue a certificate on the application having the
11 earliest effective filing date, with notice to all; or

12 (3) Issue a certificate naming both proprietors as
13 alternative owners, under a single variety name accept-
14 able to both.

15 (b) On request of one proprietor when a certificate has
16 been issued naming another proprietor as an owner or alter-
17 native owner, both having applied for protection on the same
18 variety, the Commissioner shall institute a priority contest,
19 except that a proprietor shall have forfeited his right to assert
20 priority for the purpose of obtaining plant variety protection
21 when an adverse certificate has issued if he fails to make the
22 request within one year of the mailing of notice specified in
23 part (2) above or if he fails to make the request within the
24 period for taking action after refusal of his application on the
25 basis of the adverse certificate.

1 **Sec. 93. Effect of Adverse Final Judgment or of Non**
2 **Action.**

3 (a) A final judgment under section 92 adverse to an
4 application from which no appeal or other review had been
5 or can be taken or had shall constitute cancellation of any
6 certifying on that application, and notice thereof shall be
7 endorsed on copies of the specifications of the protected plant
8 variety thereafter distributed by the Plant Variety Protection
9 Office.

10 (b) Any person who has not proceeded in accordance
11 with the provision of this chapter shall not be foreclosed or
12 in any way prejudiced with respect to the defense of an
13 infringement suit or affirmative relief under declaratory judg-
14 ment proceedings.

15 (c) No person subject to an adverse decision in a pro-
16 ceeding under this chapter shall be foreclosed with respect to
17 asserting comparable grounds in defense of an infringement
18 suit or as a basis for affirmative relief under declaratory judg-
19 ment proceedings.

20 **Sec. 94. Interfering Plant Variety Protection.**

21 The proprietor of a certificate of plant variety protection
22 may have relief against another proprietor of a certificate of
23 the same variety, or in case alternate owners are named, by
24 civil action, and the court may adjudge the question of
25 validity of the respective certificates, or the ownership of the

1 certificate. The provisions of section 73 (b) of this title shall
2 apply to actions brought under this section.

3 **TITLE III—PLANT VARIETY PROTECTION**
4 **AND RIGHTS**

Chapter	Section
10. Ownership and Assignment-----	101
11. Infringement of Plant Variety Protection-----	111
12. Remedies for Infringement of Plant Variety Protection, and Other Actions-----	121
13. Intent and Severability-----	131
14. Temporary Provision and Related Enactments-----	141

5 **Chapter 10.—OWNERSHIP AND ASSIGNMENT**

6 **Sec. 101. Ownership and Assignment.**

7 (a) Subject to the provisions of this title, plant variety
8 protection shall have the attributes of personal property.

9 (b) Applications for certificates of plant variety protec-
10 tion, or any interest in a variety, shall be assignable by an
11 instrument in writing. The proprietor may in like manner
12 grant and convey an exclusive right to use of the variety in
13 the whole or any specified part of the United States.

14 (c) A certificate of acknowledgment under the hand
15 and official seal of a person authorized to administer oaths
16 within the United States, or in a foreign country, of a diplo-
17 matic or consular officer of the United States or an officer
18 authorized to administer oaths whose authority is proved by
19 a certificate of a diplomatic or consular officer of the United
20 States, shall be prima facie evidence of the execution of an

1 assignment, grant or conveyance of plant variety protection
2 or application for plant variety protection.

3 (d) An assignment, grant, conveyance or license shall
4 be void as against any subsequent purchaser or mortgagee for
5 a valuable consideration, without notice, unless it, or an
6 acknowledgment by the assignor, and so forth, that there is
7 such encumbrance, is recorded in the Plant Variety Protec-
8 tion Office within one month from its date or one month prior
9 to the date of such subsequent purchase or mortgage.

10 **Sec. 102. Ownership During Testing.**

11 An owner who, with suitable notice, releases possession
12 of seed or other sexually reproducible plant material for
13 testing retains ownership with respect thereto; and any di-
14 version from authorized testing, or any unauthorized reten-
15 tion, of such material by anyone who has knowledge that
16 it is under such notice, or who is chargeable with notice, is
17 prohibited, and violates the property rights of the owner.
18 Anyone receiving the material tagged or labeled with the
19 notice is chargeable with the notice. The owner is entitled
20 to remedy and redress in a civil action hereunder. No remedy
21 available by state or local law is hereby excluded. No such
22 notice shall be used, or if used be effective, when the owner
23 has made identical sexually reproducible plant material
24 available to the public, as by sale thereof.

1 **Chapter 11.—INFRINGEMENT OF PLANT VARIETY**
2 **PROTECTION**

3 **Sec. 111. Infringement of Plant Variety Protection.**

4 Except as otherwise provided in this title, it shall be an
5 infringement of the rights of a proprietor of a novel variety
6 to perform without authority, any of the following acts in
7 the United States, or in commerce which can be regulated by
8 Congress or affecting such commerce, prior to expiration of
9 the right to plant variety protection but after either the issue
10 of the certificate or the distribution of a novel plant variety
11 with the notice under section 127:

12 (1) sell the novel variety, or offer it or expose it for
13 sale, deliver it, ship it, consign it, exchange it, or solicit
14 an offer to buy it, or any other transfer of title or pos-
15 session of it; except as otherwise provided herein;

16 (2) import the novel variety into, or export it from,
17 the United States;

18 (3) multiply the novel variety as a step in market-
19 ing (for growing purposes) the variety; or

20 (4) use the novel variety in producing (as dis-
21 tinguished from developing) a hybrid or different va-
22 riety therefrom; or

23 (5) use seed which had been marked "propaga-

1 tion prohibited” or progeny thereof to propagate the
2 novel variety; or

3 (6) dispense the novel variety to another, in a
4 form which can be propagated, without notice as to
5 being a protected variety under which it was received;
6 or

7 (7) perform any of the foregoing acts even in in-
8 stances in which the novel variety is multiplied other
9 than sexually; or

10 (8) instigate or actively induce performance of any
11 of the foregoing acts.

12 **Sec. 112. Right To Save Seed.**

13 Except under subsections (3) and (4) of section 111,
14 it shall not infringe any right hereunder for a person to save
15 seed and grow the resulting variety for his own use.

16 **Sec. 113. Private Defense Against Delayed Application.**

17 No plant variety protection under this Act shall abridge
18 the rights of any person who had developed a variety or his
19 successor in business to produce, reproduce or sell his own
20 variety, beginning more than one year prior to the effective
21 filing date of an adverse application for a certificate of plant
22 variety protection.

23 **Sec. 114. Crop Exemption.**

24 It shall not be an infringement to sell seed grown from
25 the protected variety, obtained (for growing) by authority

1 of the proprietor or by saving seed under section 112, for use
2 as food, feed, in manufacture or the like, if the sale is bona
3 fide for that purpose, and is in channels which are usual for
4 that purpose and in a manner exclusively for that purpose. A
5 purchaser who diverts such seed from those channels to grow-
6 ing purposes shall not be entitled to any benefit for lack of
7 notice under section 127.

8 **Sec. 115. Research Exemption.**

9 The use and reproduction of a protected variety for plant
10 breeding or other bona fide research shall not constitute an
11 infringement of the protection provided under this Act.

12 **Sec. 116. Intermediary Exemption.**

13 It shall not be an infringement to deliver, ship, consign
14 or other acts of transport or change of possession when per-
15 formed by a mere carrier or other innocent intermediaries, or
16 to offer for sale by an innocent advertising medium.

17 **Chapter 12.—REMEDIES FOR INFRINGEMENT OF**
18 **PLANT VARIETY PROTECTION, AND OTHER**
19 **ACTIONS**

20 **Sec. 121. Remedy for Infringement of Plant Variety Pro-**
21 **tection.**

22 A proprietor shall have remedy by civil action for in-
23 fringement of his plant variety protection under section 111.
24 If a variety is sold under the name of a proprietor's variety as

1 shown in his certificate, there is a prima facie presumption
2 that it is the same variety.

3 **Sec. 122. Presumption of Validity; Defenses.**

4 (a) Certificates of plant variety protection shall be pre-
5 sumed valid. The burden of establishing invalidity of a plant
6 variety protection shall rest on the party asserting invalidity.

7 (b) The following shall be defenses in any action charg-
8 ing infringement and shall be pleaded: (1) noninfringement,
9 absence of liability for infringement, or unenforceability; (2)
10 invalidity of the plant variety protection in suit on any
11 ground specified in section 42 of this title as a condition for
12 protectability; (3) invalidity of the plant variety protection
13 in suit for failure to comply with any requirement of section
14 52; (4) that the asserted infringement was performed un-
15 der an existing certificate adverse to that asserted and prior
16 to notice of the infringement; and (5) any other fact or
17 act made a defense by this Act.

18 **Sec. 123. Injunction.**

19 The several courts having jurisdiction of cases under this
20 title may grant injunctions in accordance with the principles
21 of equity to prevent the violation of any right hereunder on
22 such terms as the court deems reasonable.

23 **Sec. 124. Damages.**

24 (a) Upon finding for the proprietor the court shall
25 award damages adequate to compensate for the infringement

1 but in no event less than a reasonable royalty for the use
2 made of the variety by the infringer, together with interest
3 and costs as fixed by the court.

4 (b) When the damages are not determined by the jury,
5 the court shall determine them. In either event the court may
6 increase the damages up to three times the amount deter-
7 mined.

8 (c) The court may receive expert testimony as an aid
9 to the determination of damages or of what royalty would
10 be reasonable under the circumstances.

11 (d) As to infringement prior to, or resulting from a
12 planting prior to, issuance of a certificate for the infringed
13 variety, a court finding the infringer to have established
14 innocent intentions, shall have discretion as to awarding
15 damages.

16 **Sec. 125. Attorney Fees.**

17 The court in exceptional cases may award reasonable
18 attorney fees to the prevailing party.

19 **Sec. 126. Time Limitation on Damages.**

20 (a) No recovery shall be had for any infringement
21 committed more than six years (or three years with knowl-
22 edge of the proprietor) prior to the filing of the complaint
23 or counterclaim for infringement in the action.

24 (b) In the case of claims against the United States

1 Government for unauthorized use of a protected variety, the
2 period before bringing suit, up to six years, between the date
3 of receipt of written claim for compensation by the depart-
4 ment or agency of the Government having authority to settle
5 such claim, and the date of mailing by the Government of a
6 notice to the claimant that his claim has been denied shall
7 not be counted as part of the period referred to in the pre-
8 ceding paragraph.

9 **Sec. 127. Limitation of Damages; Marking and Notice.**

10 Proprietors may give notice to the public by physically
11 associating with or affixing to the container of seed of a novel
12 variety or by fixing to the novel variety, a label containing
13 the words "Propagation Prohibited" and after the certificate
14 issues, such additional words as "U.S. Protected Variety".
15 In the event the novel variety is distributed by authorization
16 of the proprietor and is received by the infringer without
17 such marking, no damages shall be recovered against such
18 infringer by the proprietor in any action for infringement,
19 except on proof that the infringer was notified of the in-
20 fringement and continued to infringe thereafter, in which
21 event damages may be recovered only for infringement oc-
22 curring after such notice. As to both damages and injunc-
23 tion, a court shall have discretion to be lenient as to disposal
24 of materials acquired in good faith by acts prior to such
25 notice.

1 **Sec. 128. False Marking.**

2 (a) Each of the following acts, if performed in connec-
3 tion with the sale, offering for sale, or advertising of sexually
4 reproducible plant material, is prohibited, and the Commis-
5 sioner may, if he determines after an opportunity for hear-
6 ing that the act is being so performed, issue an order to
7 cease and desist, said order being binding unless appealed
8 to the appropriate United States Court of Appeals under
9 the Federal Rules of Appellate Procedure:

10 (1) Use of the words "U.S. Protected Variety"
11 or any word or number importing that the material is
12 a variety protected under certificate, when it is not.

13 (2) Use of any wording importing that the ma-
14 terial is a variety for which an application for plant
15 variety protection is pending, when it is not.

16 (3) Use of the phrase "propagation prohibited" or
17 similar phrase without reasonable basis, a statement of
18 this basis being promptly filed with the Commissioner if
19 the phrase is used beyond experimental testing and no
20 application has been filed. Any reasonable basis expires
21 one year after commencement of use of the phrase be-
22 yond experimental testing except as justified thereafter
23 by a pending application or a certificate still in force.

24 (b) Anyone convicted of violating a binding cease and

1 desist order, or of performing any act prohibited in sub-
2 section (a) of this section for the purpose of deceiving the
3 public, shall be fined not more than \$10,000 and not less
4 than \$500.

5 (c) Anyone whose business is damaged or is likely to
6 be damaged by an act prohibited in subsection (a) of this
7 section, or is subjected to competition in connection with
8 which such act is performed, may have remedy by civil
9 action.

10 **Sec. 129. Nonresident Proprietors; Service and Notice.**

11 Every proprietor not residing in the United States may
12 file in the Plant Variety Protection Office a written desig-
13 nation stating the name and address of a person residing
14 within the United States on whom may be served process
15 or notice of proceedings affecting the plant variety protec-
16 tion or rights thereunder. If the person designated cannot
17 be found at the address given in the last designation, or if
18 no person has been designated, the United States District
19 Court for the District of Columbia shall have jurisdiction
20 and summons shall be served by publication or otherwise as
21 the court directs. The court shall have the same jurisdiction
22 to take any action respecting the plant variety protection, or
23 rights thereunder that it would have if the proprietor were
24 personally within the jurisdiction of the court.

Chapter 13.—INTENT AND SEVERABILITY

Sec. 131. Intent.

It is the intent of Congress to provide the indicated protection for new varieties by exercise of any constitutional power needed for that end, so as to afford adequate encouragement for research, and for marketing when appropriate, to yield for the public the benefits of new varieties. Constitutional clauses 3 and 8 of article I, section 8 are both relied upon.

Sec. 132. Severability.

If this Act is held unconstitutional as to some provisions or circumstances, it shall remain in force as to the remainder or with necessary implied limitations as to other circumstances, except that in no event may a provision, because a stated exemption from that provision is invalid, be effective in the area of that exemption.

Chapter 14.—TEMPORARY PROVISION AND RELATED ENACTMENTS

Sec. 141. Effective Date.

The foregoing Act shall take effect upon approval. Applications may be filed with the Secretary and held by him until the Office of Plant Variety Protection is organized and in operation.

Sec. 142. Amendment of Federal Seed Act.

1 The Federal Seed Act (53 Stat. 1275) is amended as
2 follows:

3 (a) By adding at the end thereof:

4 **“TITLE V—SALE OF UNCERTIFIED SEED OF**
5 **PROTECTED VARIETY**

6 **“Section 501.**

7 “(a) It shall be unlawful in the United States or in in-
8 terstate or foreign commerce to sell by variety name seed not
9 certified by an official seed certifying agency when it is a
10 variety for which a certificate of plant variety protection
11 under the Plant Variety Protection Act specifies sale only
12 as a class of certified seed: *Provided*, That such seed may
13 be labeled as to variety name when used in a mixture by, or
14 with the approval of, the proprietor of the variety.”

15 (b) By adding at the end of section 102 the following
16 wording: Seed shall be certified only when the basic seed
17 from which a variety was produced was furnished by the
18 originator of the variety, his successor in title, and, when
19 specified, conforms to the number of generations designated
20 by the originator.

21 **Sec. 143. Amendment of Judicial Code.**

22 Title 28 of the United States Code, entitled Judicial
23 Code and Judiciary, is amended as follows:

24 (a) After section 1544 add:

1 **Sec. 1545. Decision of the Plant Variety Protection Office.**

2 The Court of Customs and Patent Appeals shall have
3 nonexclusive jurisdiction to review by appeal decisions of
4 the Plant Variety Protection Office, provided that the deci-
5 sion appealed from is on appeal within the Plant Variety
6 Protection Office, if such appeal is permitted.

7 (b) In section 1338 after “Patents” in the heading,
8 after “patents” and after “patent” (both occurrences) insert
9 “, plant variety protection”.

A BILL

To encourage the development of novel varieties of sexually reproduced plants and to make them available to the public, providing protection available to those who breed, develop, or discover them, and thereby promoting progress in agriculture in the public interest.

By Mr. MULLER, Mr. DOLE, Mr. EASTLAND, Mr. HOLLINGS, Mr. JORDAN of North Carolina, and Mr. YOUNG of North Dakota

OCTOBER 23, 1969

Read twice and referred to the Committee on
Agriculture and Forestry

vides for acreage diversion in relation to them when necessary to avoid surpluses. It also authorizes an emergency reserve or consumer protection reserve of cotton, feed grains, wheat and soybeans.

In addition, the already existing rice program legislation and cropland adjustment authorizations are extended indefinitely. The 1964 food-stamp program is permanently continued with necessary appropriations and the bill provides that an applicant who cannot afford the minimum cash payments for stamps can work or perform other services to pay for them.

Mr. President, I congratulate the coalition of farm organizations who have joined together to speak with one voice in advocating this comprehensive legislation. Their united and responsible approach to the farm crisis is a credit to all their members and to the agricultural industry. The member groups of this broad based coalition are: National Farmers Union, National Grange, Mid-continent Farmers Association, National Farmers Organization, Grain Sorghum Producers' Association, Soybean Growers of America, National Association of Wheat Growers, National Milk Producers Federation, Pure Milk Products Cooperative, Peanut Growers Cooperative Marketing Association, North Carolina Peanut Growers Association, Virginia Peanut Growers Association, Western Cotton Growers Association, National Potato Council, National Corn Growers Association, American Rice Growers Cooperative Association, United Grain Farmers of America, Webster County, Nebr., Farmers Organization, National Wool Growers Association, Farmers Cooperative Council of North Carolina, Virginia Council of Farmers Cooperatives, and National Rice Growers Association.

This bill is truly an investment in America and the returns will be great. For the money we invest, we get back a reliable food supply at the cheapest real cost to consumers ever achieved by any major nation in history. We will guarantee a stable agricultural economy domestically and insure a favorable balance of trade on farm and ranch exports. And perhaps most importantly, we will help farmers and ranchers stay on their land, turning out those products which feed and clothe our Nation.

Mr. NELSON. Mr. President, I am pleased to join in the sponsorship of this legislation to extend and revise several of our commodity programs in accordance with the general agreement of more than 20 of our Nation's farm groups and commodity organizations.

The Food and Agricultural Act of 1965, which this bill amends, is the basis of several important commodity programs which expire at the end of next year. It is my hope that the Senate Agriculture Committee will be able to give this proposal and other similar bills thorough consideration over the coming months and come up with a final measure that will stabilize farm prices and improve farm income for our Nation's agricultural community.

While I am in general agreement with most of the basic provisions of this legis-

lation, I do have some strong reservations about the modifications to the class I base plan program for milk producers as provided for in this bill. A number of dairy farmer organizations in Wisconsin and other major dairy States have expressed grave concern over the potential effect that these class I amendments may have on the movement of milk and the prices that that milk may bring in various class I markets. They fear that it will not be possible for producers from major dairy States, such as Minnesota and Wisconsin, to receive equitable prices for their milk in class I base plan markets, even if the milk is needed there.

It is my hope that both the Senate and House Agriculture Committees will study this matter of restrictive markets that may develop from these amendments and place clear language in the bill that will not only prevent barriers from being established to restrict the interstate sale and shipment of milk but will also guarantee that all farmers shipping milk to a market receive equitable prices for that milk.

S. 3069—INTRODUCTION OF A BILL ESTABLISHING A VOLUNTEERS IN THE PARK PROGRAM

Mr. JACKSON. Mr. President, on behalf of the ranking minority member of the Senate Interior Committee (Mr. ALLOTT) and myself, I introduce for appropriate reference a bill to authorize the Secretary of the Interior to establish a Volunteers in the Park program, and for other purposes.

This proposed legislation was submitted and recommended by the Secretary of the Interior, and I ask unanimous consent that the letter from the Secretary accompanying the draft bill be printed in the RECORD following my remarks.

The PRESIDING OFFICER. The bill will be received and appropriately referred; and, without objection, the letter will be printed in the RECORD.

The bill (S. 3069) to authorize the Secretary of the Interior to establish a Volunteers in the Park program, and for other purposes, introduced by Mr. JACKSON, for himself and Mr. ALLOTT, by request, was received, read twice by its title, and referred to the Committee on Interior and Insular Affairs.

The letter presented by Mr. JACKSON is as follows:

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., July 9, 1969.

Hon. SPIRO T. AGNEW,
President of the Senate,
Washington, D.C.

DEAR MR. PRESIDENT: Enclosed is a draft of a bill "To authorize the Secretary of the Interior to establish a Volunteers in the Park program, and for other purposes."

We recommend that the bill be referred to the appropriate committee for consideration, and we recommend that it be enacted.

The bill authorizes the Secretary of the Interior to employ individuals without compensation, in volunteer programs in and relating to areas administered by the National Park Service. Authority is included to provide transportation, uniforms, lodging, and subsistence as may be necessary or appropriate. Volunteers would not be considered as Federal employees except for purposes of the Federal Tort Claims Act and statutes per-

taining to compensation for injuries. Restrictions on appointments of personnel contained in Title II of the Revenue and Expenditure Control Act of 1968 would not apply to such volunteers.

Volunteer work is a traditional and basic value of American life. Voluntary service is associated with citizenship, and it has helped to improve conditions in neighborhoods, cities, and across the Nation. Volunteers representing all segments of our population are today working in the fields of health, education, welfare, cultural affairs, and community activities. We believe there is a need for the special volunteer services many persons and organizations could provide in interpreting the parks and providing other visitor services, and we believe the enactment of the enclosed bill would encourage such volunteers.

We envision the park volunteer as a private citizen accepting an appointment, without compensation, to a specific job for a limited period. The job would be complementary to, and in addition to, the tasks of the regular career employees, and would not diminish their roles.

Duties would center on interpretation and visitor services. Examples of duties which would be performed by park volunteers are:

Special information services to visitors.
Assisting in archeological digs.
Special research projects.
Interpreting historical events.

Volunteers would provide the supplemental skills needed to bolster the interpretive efforts of the National Park Service at such areas as Independence National Historical Park, Pennsylvania (the nation's birthplace), Fort Union Trading Post National Historic Site, Montana-North Dakota (a remnant of the Missouri River fur trade), and Yellowstone National Park, Idaho-Montana-Wyoming (outstanding displays of bear, deer, and moose).

Volunteers would be selected largely from areas close to the park at which they are to be employed, and on the basis of skills which are generally unavailable in the regular staff, such as special writing ability, ability to stimulate young visitors, etc. Individuals from conservation groups, the various Scouting organizations, Chambers of Commerce, ski clubs, for example, would be considered for appointment as park volunteers.

Costs of the volunteer program will be taken from regular operating expenditures. We estimate that there is a need for work of a specialized nature to be done by approximately 300 volunteers in the first year and grow to substantial numbers in the next 5 years. We estimate that the cost of equipping and servicing a volunteer will be approximately \$270 per volunteer:

Uniforms and/or uniform accessories	\$40
Meals per year	75
Transportation	75
Pins, awards, merit badges, etc.	8
Medical examination	7
Orientation and training	40
Miscellaneous	25

Total per volunteer

The Bureau of the Budget has advised that there is no objection to the presentation of this proposed legislation from the standpoint of the Administration's program.

Sincerely yours,

WALTER J. HICKEL,
Secretary of the Interior.

A bill to authorize the Secretary of the Interior to establish a Volunteers in the Park program, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior (hereinafter referred to as the Secretary) is authorized to recruit, train, and accept without regard to

the Civil Service Classifications laws, rules, or regulations the services of individuals without compensation as volunteers for or in aid of interpretive functions, or other visitor services or activities in and related to areas administered by the Secretary through the National Park Service.

Sec. 2. The Secretary is authorized to provide for incidental expenses, such as transportation, uniforms, lodging, and subsistence.

Sec. 3. (a) Except as otherwise provided in this section, a volunteer shall not be deemed a Federal employee and shall not be subject to the provisions of law relating to Federal employment, including those relating to hours of work, rates of compensation, leave, unemployment compensation, and Federal employee benefits.

(b) For the purposes of the tort claim provisions of title 28 of the United States Code, a volunteer under this Act shall be considered a Federal employee.

(c) For the purposes of subchapter I of chapter 81 of title 5 of the United States Code, relating to compensation to Federal employees for work injuries, volunteers under this Act shall be deemed civil employees of the United States within the meaning of the term "employee" as defined in section 8101 of title 5, United States Code, and the provisions of that subchapter shall apply.

Sec. 4. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

Sec. 5. This Act may be cited as the "Volunteers in the Parks Act of 1969."

S. 3070—INTRODUCTION OF A BILL RELATING TO THE DEVELOPMENT OF CERTAIN PLANTS

Mr. MILLER. Mr. President, I introduce for myself and Senators DOLE, EASTLAND, HOLLINGS, JORDAN of North Carolina, and YOUNG of North Dakota, a bill to encourage the development of novel varieties of sexually reproduced plants and making them available to the public by making protection available to those who breed, develop or discover them.

The principal features of this bill are as follows:

First. The new law will be administered by a new bureau to be created within the U.S. Department of Agriculture. This bureau would be called the Plant Variety Protection Office. It would be headed by a commissioner appointed by the Secretary of Agriculture. The Commissioner of Plant Variety Protection would be assisted by a plant variety protection board. This board would be made up of approximately equal representation from the private or seed industry sector on the one hand, and the Government or public sector on the other. The review board would be empowered to make advisory decisions on appeals from decisions of the examiner. It would also advise the Commissioner concerning the rules and regulations which supplement the act.

Second. Applications for plant variety protection would be handled much as industrial patent applications are. The breeder would submit a detailed, written description of his new variety in which he would put forth his claims for novelty, for stability, and for reproductibility. A sample of basic seed would be deposited to protect the public interest.

Third. Breeders using the system would be charged fees so that the whole program would be essentially self-sup-

porting. The fee would vary somewhat depending on whether extra copies of the certificate of protection are desired, whether an appeal is made, an assignment is involved, or whether there is a delay in payment, but the basic application fee is expected to be \$50.

Fourth. Any sexually reproduced plant other than hybrids, fungi, and bacteria would be protectable under the new act. A breeder or developer would have 1 year after commercial sale of the variety to apply for protection. This scheme would be available to foreign breeders to the extent their governments afford like privileges to nationals of the United States.

Fifth. Once approved by the Plant Variety Protection Office, a certificate of plant variety protection would be issued. This certificate would allow the owner to imprint some such statement as, "U.S. Protected Variety" on his label, thus notifying the public of the protected status of his variety. Or, should the applicant desire, he could additionally elect to protect his variety under the certification system, in which case the variety could be sold only as certified seed, which fact would be made evident on the special certification label.

Sixth. Applications or certificates of plant variety protection would be assignable. The proprietor could grant or convey an exclusive right to the use of his varieties in the United States or any part of it.

Seventh. The term of protection presently proposed, for all crops, would be 17 years. This is the same period of protection granted asexual plants under the Plant Patent Act.

Eighth. Infringement of the right granted would occur when anyone, without authority, first, sells or offers for sale the protected variety; second, reproduces the variety as a step in the production of another variety of hybrid; third, imports or exports the variety into or from the United States; or, fourth, multiplies the novel variety as a step in marketing such as producing seed for growing transplants for sale.

Ninth. The law would include a special exemption for farmers. They would be allowed to produce seed of a protected variety for their own use.

Tenth. Defense of the right granted would be through civil action. In such actions, certificates of plant variety protection would be presumed valid and it would, therefore, be incumbent on the defendant in the civil action to establish invalidity or other defenses. Should the court decide in favor of the plaintiff, damages would be awarded which, in no event, would be less than a reasonable royalty for the use made of the protected variety by the infringer.

Eleventh. At his option, the proprietor could elect to require that all seed sold be certified, and this provision would be subject to enforcement by the Federal Seed Act officials for such seed moving in interstate commerce.

This legislation is designed to serve as a stimulus for investment of corporate funds in variety research and development of planting seed. It is the intention that the legislation would result in benefits in the form of new and improved

varieties with increased yields, greater disease resistance, insect resistance, increased protein, oil, fiber strength, quality of vegetables, and many other crop improvements unknown today to the plant breeders.

Mr. President, I ask unanimous consent to have printed in the RECORD at this point a resolution passed by the Iowa Seed Council on October 15, 1969, recognizing the need for a National Plant Variety Protection Act and approving the principles embodied in the bill I am introducing today.

The PRESIDING OFFICER. The bill will be received and appropriately referred; and, without objection, the resolution passed by the Iowa Seed Council, will be printed in the RECORD.

The bill (S. 3070) to encourage the development of novel varieties of sexually reproduced plants and to make them available to the public, providing protection available to those who breed, develop, or discover them, and thereby promoting progress in agriculture in the public interest, introduced by Mr. MILLER (for himself and other Senators), was received, read twice by its title, and referred to the Committee on Agriculture and Forestry.

The resolution, presented by Mr. MILLER, is as follows:

RESOLUTION PASSED BY IOWA SEED COUNCIL ON OCTOBER 15, 1969

Whereas, new varieties of plants that are asexually reproduced can be protected under the present Plant Patent Act; and

Whereas, new varieties of plants that are sexually reproduced cannot be protected under the present Plant Patent Act; and

Whereas, the breeder, developer or discoverer should be afforded the opportunity to obtain protection for new varieties of plants that are sexually reproduced in order to encourage research and development of such new varieties and to promote continuing progress in agriculture;

Now, therefore, be it resolved that the Iowa Seed Council (Advisory Council composed of representatives of the Iowa Seed Dealers Association, Iowa Crop Improvement Association, Iowa Department of Agriculture, and Iowa State University) does hereby recognize the need for a national plant variety protection act for the protection of new varieties that are sexually reproduced and approves the principles embodied in the National Plant Variety Protection Act.

ADDITIONAL COSPONSORS OF BILLS

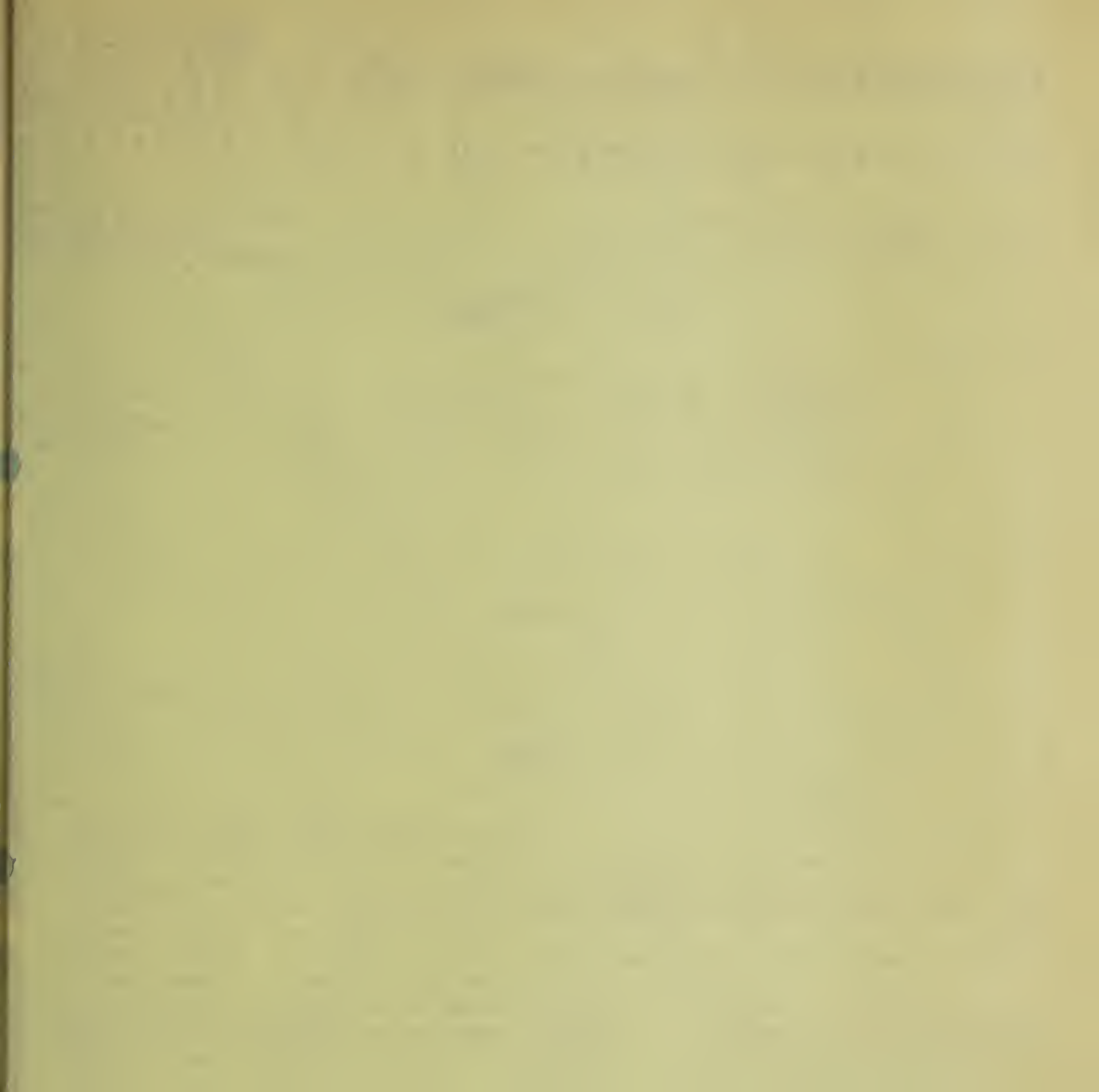
S. 1958

Mr. BYRD of West Virginia. Mr. President, on behalf of the Senator from Oklahoma (Mr. HARRIS), I ask unanimous consent that, at the next printing, the name of the Senator from Alabama (Mr. ALLEN) be added as a cosponsor of S. 1958, the Prevailing Wage Rate Determination Act of 1969.

The PRESIDING OFFICER. Without objection, it is so ordered.

S. 2004

Mr. BYRD of West Virginia. Mr. President, on behalf of the Senator from Rhode Island (Mr. PASTORE), I ask unanimous consent that, at the next printing, the name of the Senator from South Carolina (Mr. THURMOND) be added as a cosponsor of S. 2004, to amend the Communications Act of 1934 to establish or



DIGEST of Congressional Proceedings

OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

OFFICE OF BUDGET AND FINANCE
(FOR INFORMATION ONLY;
NOT TO BE QUOTED OR CITED)

For actions of August 19, 1970
91st-2nd; No. 144

CONTENTS

Agriculture & Forestry Committee Action.....1	Electrification.....3	Plant varieties.....1
Appropriations.....5	Farm bill.....1,2	Recreation.....4
Credit Unions.....1	Fuels.....3	Reorganization Plan No. 3.....1
	Grants-in-aid.....6	Waste facilities.....6

HOUSE

Not in session.

SENATE

1. AGRICULTURE AND FORESTRY COMMITTEE ACTION

PLANT VARIETIES. Voted to report (but did not actually report) S. 3070 to encourage development of novel varieties of plants.

FARM BILL. Resumed consideration of H.R. 18546, the proposed Agricultural Act of 1970, but did not conclude action.

REORGANIZATION PLAN No. 3: Considered Reorganization Plan No. 3 to establish an independent Environmental Protection Agency. p. D928

CREDIT UNIONS. Committee on Banking and Currency reported with amendments, S. 3822, to provide insurance for member accounts in State and federally chartered credit unions. S. Rept. 91-1128, p. S13726

2. FARM BILL. Sen's. Smith of Ill. and Williams, Del., submitted amendment No. 846, to farm bill (H.R. 18546) to establish improved programs for the benefit of

producers and consumers of dairy products, wool, wheat, feed grains, cotton, and other commodities, and to extend the Agricultural Trade Development and Assistance Act of 1954. To Agriculture and Forestry Committee. p. S13733

3. ELECTRIFICATION; FUELS. Sen. Gore discussed the energy, fuels crisis and stated that "We are faced with a disturbingly dangerous crisis in our supplies of fuels for the generation of electricity and without ample and reasonably priced electrical energy our whole national economy will be endangered." pp. S13764-6
4. RECREATION. Sen. Moss, Utah, deplored the cut in funds for Flaming Gorge National Recreation Area and inserted an editorial "Federal Economy Ax Cuts Funds for Flaming Gorge Development!" p. S13770

EXTENSIONS OF REMARKS

5. APPROPRIATIONS. Rep. Mahon inserted the report of the Joint Committee on Reduction of Federal Expenditures for the month of August. pp. E7799-7802
Sen. Hart inserted tabulations of H.R. 16916, Office of Education Appropriation bill which were omitted from August 18th Record. pp. E7806-57

BILL INTRODUCED

6. GRANTS-IN-AID; WASTE FACILITIES. S. 4265, Hatfield. To amend section 306 of the Consolidated Farmers Home Administration Act to increase the aggregate annual limit on grants for water and waste facilities constructed to serve rural areas and to increase the aggregate annual limit on grants for plans for the development of such facilities; to Agriculture and Forestry Committee.
Remarks of author, pp. 13722-30.

NEW PUBLIC LAW

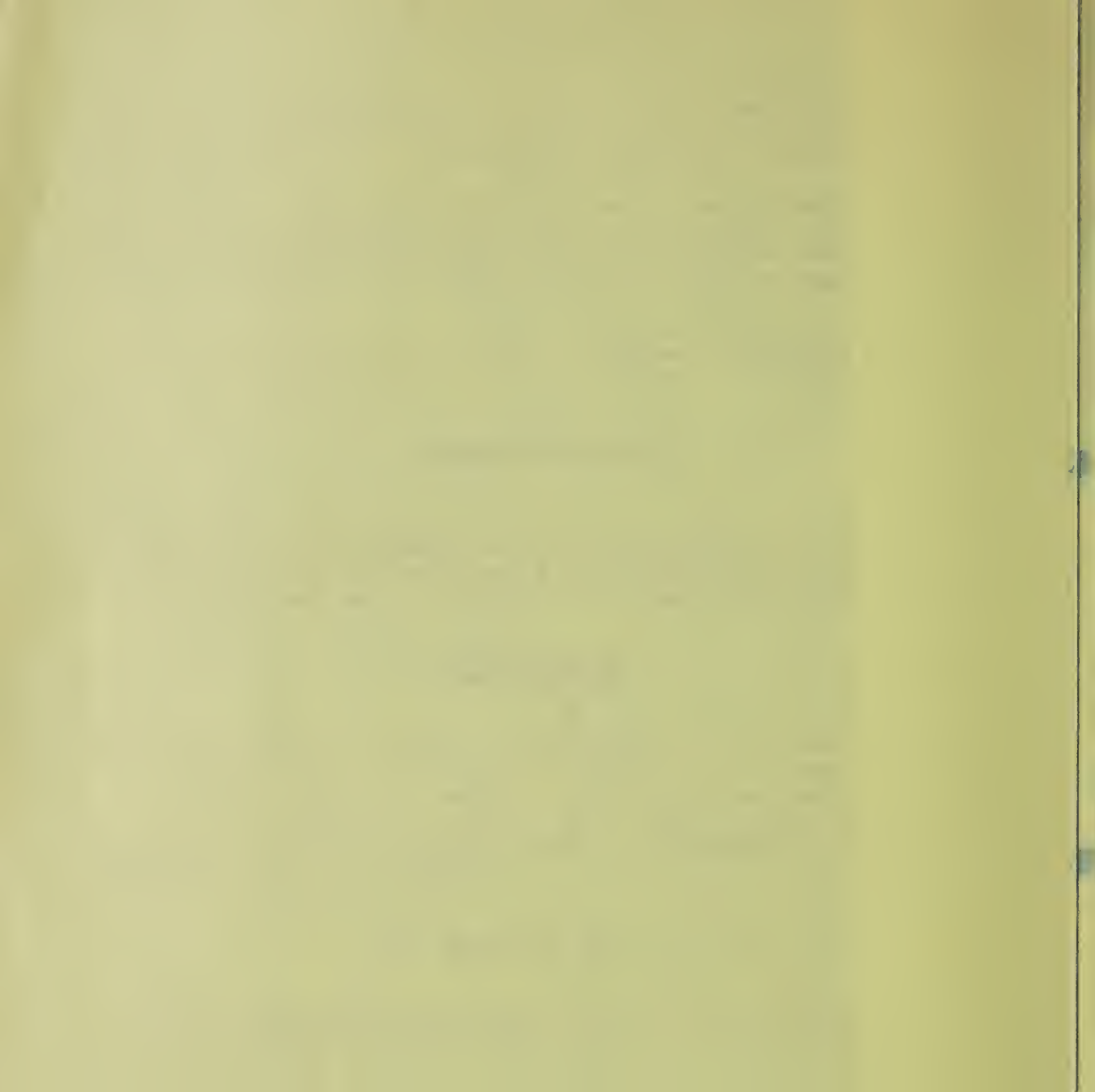
H.R. 16916, fiscal 1971 appropriations for the Office of Education. Bill passed over Presidential veto. August 18, 1970 (Public Law 91-380)

COMMITTEE HEARINGS ANNOUNCEMENTS AUGUST 20:

Farm program, S. Agriculture and Forestry (exec.)

Secretary Hardin to testify.

Housing and urban development legislation, S. Banking and Currency (exec.)



DIGEST of Congressional Proceedings

OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

OFFICE OF BUDGET AND FINANCE
(FOR INFORMATION ONLY;
NOT TO BE QUOTED OR CITED)

For actions of August 21, 1970
91st-2nd; No. 146

CONTENTS

Acreage allotments.....8	Conservation.....4	Foreign trade.....5,7
Adjournment.....6	Farm supports.....2	Grain.....3
		Novel plant varieties...1

HIGHLIGHTS: Senate Committee reported plant variety protection bill.
Sen. Randolph protested proposed elimination of agricultural
conservation program.

SENATE

1. NOVEL PLANT VARIETIES. Committee on Agriculture and Forestry reported S. 3070, to encourage the development of novel varieties of plants (S. Rept. 91-1138). p. S13927
2. FARM SUPPORTS. Sen. Mondale stated that wheat and feed grain farmers of Minnesota would lose \$40-\$50 million annually in farm support payments under the House passed farm bill. pp. S13940-41

3. GRAIN. Sen. Dole expressed concern over the corn blight and argued that agriculture is being taken for granted, with not enough public interest in the problems of the farmer. pp. S13944-5
4. CONSERVATION. Sen. Randolph stressed the importance of agricultural conservation and deplored the proposed elimination of ACP from the FY 1971 budget. p. S13935
5. FOREIGN TRADE. Sen. Javits spoke in opposition to the trade legislation (HR 18970) under consideration in the House, calling it the "Tonkin Gulf resolution of international trade". pp. S13902-4
6. ADJOURNED until Monday, August 24. p. S13989

EXTENSION OF REMARKS

7. FOREIGN TRADE. Rep. Culver stated that present trade programs should be improved and liberalized if they do not work, but that the imposition of quotas would "promote the establishment of monopolistic prices". pp. E7881-2

BILLS INTRODUCED

8. ACREAGE ALLOTMENTS. S. 4278, by Senator Harris, to amend section 378(a) of the Agricultural Adjustment Act of 1938, as amended, to remove certain limitations on the establishment of acreage allotments for other farms owned by persons whose farms have been acquired by any Government agency having the right of eminent domain; to the Committee on Agriculture and Forestry. Remarks of author, p. S13928

-0-

COMMITTEE HEARINGS ANNOUNCEMENTS:

AUGUST 24: Family assistance, S. Finance

AUGUST 25: Farm bill, S. Agriculture (exec., Secretary to testify)

-oOo-

PLANT VARIETY PROTECTION ACT

AUGUST 21 (legislative day, AUGUST 20) ,1970.—Ordered to be printed

Mr. JORDAN of North Carolina, from the Committee on Agriculture and Forestry, submitted the following

REPORT

[To accompany S. 3070]

The Committee on Agriculture and Forestry, to which was referred the bill (S. 3070) to encourage the development of novel varieties of sexually reproduced plants and to make them available to the public, providing protection available to those who breed, develop, or discover them, and thereby promoting progress in agriculture in the public interest, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

SHORT EXPLANATION

This bill provides for the issuance of "certificates of plant variety protection" assuring the developers of novel varieties of sexually reproduced plants of exclusive rights to sell, reproduce, import, or export such varieties, or use them in the production (as distinguished from the development) of hybrids or different varieties, for a period of 17 years. A Plant Variety Protection Office would be established in the Department of Agriculture to administer the law. Similar protection is now provided for asexually reproduced varieties through patents issued by the Patent Office.

HEARINGS

Hearings were held by the committee's subcommittee on agricultural research and general legislations on June 11, 1970. Witnesses in favor were Senator Miller; American Seed Trade Association; National Council of Commercial Plant Breeders; Ferry Morse Seed Co.; Anderson, Clayton & Co.; Growers Seed Association; Coker's Pedigreed Seed Co.; O. M. Scott & Sons Co.; Stoneville Pedigreed Seed Co.; Association of Official Seed Certifying Agencies; National Cotton Council; Stark Bros. Nursery; and the Seed Policy Subcommittee of

the State Experiment Stations Committee on Organization and Policy. Witnesses in opposition were the Campbell Institute for Agricultural Research and (as to fruits and vegetables) the American Frozen Food Institute. Arguments in favor were that protection of proprietary interests in plant varieties is supported by the Constitution, experience with industrial and asexual plant variety patents, and the example of western European and other nations. The bill will protect the developer of new varieties, stimulate private plant breeding, allow Government experiment stations to increase their efforts on basic research and areas which industry may not pursue, give farmers and gardeners more and better varieties, make American agricultural products more competitive in world markets, and provide more, better, and cheaper products for consumers. Arguments in opposition were that the development and release of new varieties would be delayed since the free exchange of information, germ plasm, and breeding stock would be inhibited; the difficulty of establishing uniqueness, stability, and other characteristics of novel varieties would make administration difficult; development of a new variety is slow and may represent the work of many public and other agencies, so that exclusive rights should not be given to any developer in the chain; the cost in money and in time of scientific personnel in applications, interference proceedings, and litigation would be prohibitive; and adequate protection can be achieved under existing law through seed certification programs and development of first generation hybrids. A number of amendments were suggested, all of which were carefully considered by the committee. The committee amendment incorporates a number of these amendments, as well as a number of technical corrections and improvements.

CONTENTS OF BILL, AS AMENDED BY COMMITTEE AMENDMENT

The bill, as amended by the committee amendment, would (1) establish a Plant Variety Protection Office, (2) provide for the issuance of certificates of plant variety protection, and (3) delineate the rights represented by such certificates. The bill is patterned to a limited extent after title 35 of the United States Code, which provides for the Patent Office, patents, and patent rights, and is divided into titles, chapters, and sections as follows:

TITLE I—PLANT VARIETY PROTECTION OFFICE

CHAPTER 1.—ORGANIZATION AND PUBLICATIONS

- Section 1. Establishment.
- Section 2. Seal.
- Section 3. Organization.
- Section 4. Restrictions on Employees as to Interest in Plant Variety Protection.
- Section 5. Bond of Employees.
- Section 6. Regulations.
- Section 7. Plant Variety Protection Board.
- Section 8. Library.
- Section 9. Register of Protected Plant Varieties.
- Section 10. Publications.
- Section 11. Copies for Public Libraries.

CHAPTER 2.—LEGAL PROVISIONS AS TO THE PLANT VARIETY PROTECTION OFFICE

- Section 21. Day for Taking Action Falling on Saturday, Sunday, or Holiday.
- Section 22. Form of Papers Filed.
- Section 23. Testimony in Plant Variety Protection Office Cases.
- Section 24. Subpoenas, Witnesses.
- Section 25. Effect of Defective Execution.
- Section 26. Regulations for Practice Before the Office.
- Section 27. Unauthorized Practice.

CHAPTER 3.—PLANT VARIETY PROTECTION FEES

- Section 31. Plant Variety Protection Fees; Appropriations.
- Section 32. Payment of Plant Variety Protection Fees; Return of Excess Amounts.

TITLE II—PROTECTABILITY OF PLANT VARIETIES AND CERTIFICATES OF PROTECTION

CHAPTER 4.—PROTECTABILITY OF PLANT VARIETIES

- Section 41. Definitions and Rules of Construction.
- Section 42. Right To Plant Variety Protection; Plant Varieties Protectable.
- Section 43. Reciprocity Limits.
- Section 44. Public Interest in Wide Usage.

CHAPTER 5.—APPLICATIONS: FORM, WHO MAY FILE, RELATING BACK, CONFIDENTIALITY

- Section 51. Application for Recognition of Plant Variety Rights.
- Section 52. Content of Application.
- Section 53. Joint Breeders.
- Section 54. Death or Incapacity of Breeder.
- Section 55. Benefit of Earlier Filing Date.
- Section 56. Confidential Status of Application.
- Section 57. Publication.

CHAPTER 6.—EXAMINATION, RESPONSE TIME, INITIAL APPEALS

- Section 61. Examination of Application.
- Section 62. Notice of Refusal; Reconsideration.
- Section 63. Initial Appeal.

CHAPTER 7.—APPEALS TO COURTS AND OTHER REVIEW

- Section 71. Appeals.
- Section 72. Civil Action Against Secretary.
- Section 73. Appeal or Civil Action in Contested Cases.

CHAPTER 8.—CERTIFICATES OF PLANT VARIETY PROTECTION

- Section 81. Plant Variety Protection.
- Section 82. How Issued.
- Section 83. Contents and Term of Plant Variety Protection.

Section 84. Certificate of Correction of Plant Variety Protection Office Mistake.

Section 85. Certificate of Correction of Applicant's Mistake.

Section 86. Correction of Named Breeder.

CHAPTER 9.—REEXAMINATION AFTER ISSUE, AND CONTESTED PROCEEDINGS

Section 91. Reexamination After Issue

Section 92. Priority Contest.

Section 93. Effect of Adverse Final Judgment or of Non Action.

Section 94. Interfering Plant Variety Protection.

TITLE III—PLANT VARIETY PROTECTION AND RIGHTS

CHAPTER 10.—OWNERSHIP AND ASSIGNMENT

Section 101. Ownership and Assignment.

Section 102. Ownership During Testing.

CHAPTER 11.—INFRINGEMENT OF PLANT VARIETY PROTECTION

Section 111. Infringement of Plant Variety Protection.

Section 112. Grandfather Clause.

Section 113. Right To Save Seed. Crop Exemption.

Section 114. Research Exemption.

Section 115. Intermediary Exemption.

CHAPTER 12.—REMEDIES FOR INFRINGEMENT OF PLANT VARIETY PROTECTION, AND OTHER ACTIONS

Section 121. Remedy for Infringement of Plant Variety Protection.

Section 122. Presumption of Validity; Defenses.

Section 123. Injunction.

Section 124. Damages.

Section 125. Attorney Fees.

Section 126. Time Limitation on Damages.

Section 127. Limitation of Damages; Marking and Notice.

Section 128. False Marking; Cease and Desist Orders.

Section 129. Nonresident Proprietors; Service and Notice.

CHAPTER 13.—INTENT AND SEVERABILITY

Section 131. Intent.

Section 132. Severability.

CHAPTER 14.—TEMPORARY PROVISION AND RELATED ENACTMENTS; MISCELLANEOUS

Section 141. Effective Date.

Section 142. Amendment of Federal Seed Act.

Section 143. Amendment of Judicial Code.

SECTION-BY-SECTION EXPLANATION

TITLE I—PLANT VARIETY PROTECTION OFFICE

CHAPTER 1.—ORGANIZATION AND PUBLICATIONS

Section 1. Establishment.—This section establishes a Plant Variety Protection Office in the Department of Agriculture.

Section 2. Seal.—This section provides that the Plant Variety Protection Office shall have a seal with which documents and certificates evidencing plant variety protection shall be authenticated.

Section 3. Organization.—This section authorizes the Secretary of Agriculture to determine the organization of the Plant Variety Protection Office.

Section 4. Restrictions on Employees as to Interest in Plant Variety Protection.—This section makes employees of the Plant Variety Protection Office ineligible to apply for plant variety protection or to acquire (except by inheritance or bequest) any interest in any matters before that office. This section does not apply to members of the Plant Variety Protection Board who are not otherwise employees of the office.

Section 5. Bond of Employees.—This section requires surety bonds from such employees as may be designated by the Secretary to secure the faithful discharge of their duties.

Section 6. Regulations.—This section authorizes the Secretary to establish regulations for the conduct of proceedings in the office.

Section 7. Plant Variety Protection Board.—This section provides for a Plant Variety Protection Board to advise the Secretary concerning regulations and on all appeals from the examiner, and to advise the Secretary on declaring a protected variety open to public use for reasonable royalties under section 44. The board would consist of such number of members as the Secretary might appoint. They would be persons expert in various areas of varietal development covered by the act and would be drawn approximately equally from the private or seed industry sector and from the sector of Government or the public. The Secretary or his designee would act as chairman without vote except in the case of ties.

Section 8. Library.—This section provides for the maintenance of a library to aid the officers in the discharge of their duties.

Section 9. Register of Protected Plant Varieties.—This section requires the Secretary to maintain a register of published specifications of United States protected plant varieties.

Section 10. Publications.—This section authorizes the Secretary to publish plant variety protection specifications; the Official Journal of the Plant Variety Protection Office; and laws, rules of practice, or other publications relating to the business of the office. It also authorizes him to establish public facilities for record searches, disseminate information, and exchange publications, specifications and certain other materials for similar materials.

Section 11. Copies for Public Libraries.—This section authorizes the Secretary to supply copies of specifications, drawings, and photographs of protected varieties to public libraries in the United States.

CHAPTER 2.—LEGAL PROVISIONS AS TO THE PLANT VARIETY PROTECTION OFFICE

Section 21. Day for Taking Action Falling on Saturday, Sunday, or Holiday.—This section provides that when the office is closed on a day that any action is to be taken, the action may be taken on the next succeeding business day.

Section 22. Form of Papers Filed.—This section authorizes the Secretary to prescribe the form of papers to be filed in the office.

Section 23. Testimony in Plant Variety Protection Office Cases.—This section provides for the taking of affidavits and depositions by any officer authorized to take depositions for use in the courts or by any hearing officer acting by authority of the Secretary.

Section 24. Subpenas, Witnesses.—This section provides for issuance of subpenas, witness fees, and enforcement through judicial contempt procedures. Subpenas would be issued upon the application of any party by the clerk of any U.S. court for the district wherein the testimony is to be taken for any witness residing or being within such district or within 100 miles of the hearing site. Every witness subpoenaed or testifying would be allowed fees and traveling expenses as in U.S. district courts.

Section 25. Effect of Defective Execution.—Defectively executed documents may be provisionally accepted by the Secretary provided a properly executed document is submitted within such time as may be prescribed.

Section 26. Regulations for Practice Before the Office.—This section authorizes the Secretary to regulate practice before the office.

Section 27. Unauthorized Practice.—This section provides for actions for return of money paid them, civil damages, and injunctions against persons guilty of unauthorized practice before the office. The principal effect of the section insofar as a remedy for damage is concerned is to place the burden of proof on the unauthorized practitioner to show that the work was done competently and without negligence.

This section exempts any authorized practitioner from liability for damages if he establishes that the work was done competently and without negligence. The section is not applicable to a person who, without a claim of self-sufficiency, works under the supervision of another who is admitted to practice and the responsible party, nor to anyone who establishes that he acted only on behalf of any employer by whom he was regularly employed.

CHAPTER 3.—PLANT VARIETY PROTECTION FEES

Section 31. Plant Variety Protection Fees, Appropriations.—This section would provide for the collection of reasonable fees established by the Secretary to cover substantially all costs of administration; provide for their deposit in a revolving fund which would be available for administration of the act; and provide for a \$50 filing fee pending establishment of fees by the Secretary.

Section 32. Payment of Plant Variety Protection Fees; Return of Excess Amounts.—This section provides for payment of fees to the Secretary and refund of any sum paid by mistake.

TITLE II—PROTECTABILITY OF PLANT VARIETIES AND CERTIFICATES OF PROTECTION

CHAPTER 4.—PROTECTABILITY OF PLANT VARIETIES

Section 41. Definitions and Rules of Construction.—Subsection (a) defines “novel variety” as one differing in any characteristic from all prior varieties, possessing uniformity to the extent that any variations are predictable and commercially acceptable, and having reasonable stability.

Subsection (b) defines “United States” to include territories, possessions, and the Commonwealth of Puerto Rico.

Subsection (c) defines “kind” as one or more related species or subspecies known by a common name, such as soybeans, flax, carrot, or radish.

Subsection (d) defines “date of determination” as the date of at least tentative determination that the variety has been sexually reproduced with recognized characteristics making it a novel variety, whether or not the novelty thereof has been determined. This is intended to require that the variety has been determined to possess the characteristics which make it novel, even though the novelty of such characteristics is not established until a later date.

Subsection (e) defines “breeder” to make it clear that the person directing the final breeding creating the novel variety, or discovering the novel variety, or the principal of such person if he is acting for a principal, is to be considered the breeder.

Subsection (f) defines “sexually produced” to include any production by seed.

Subsection (g) defines the term “basic seed” as the seed planted to produce certified or commercial seed.

Subsection (h) defines the term “testing” to provide for a period prior to the first sale of the variety during which it can be tested without becoming a public variety.

Subsection (i) defines “public variety.” Public varieties are not subject to protection under the bill. Since they are public property no exclusive rights can be obtained.

Subsection (j) provides that a variety shall be “effectively available to workers in this country” within the meaning of section 42(1)(B) if a source from which the variety can be purchased is indicated in the publication described in section 42(1)(B) or readily determinable or if the publication teaches how to produce the variety from source material available to workers in this country. Varieties covered by section 42(1)(B) are in the public domain, so exclusive rights in them cannot be obtained under the bill.

Section 42. Right to Plant Variety Protection; Plant Varieties Protectable.—Under this section the breeder of any novel variety of sexually reproduced plants (except fungi, bacteria, and hybrids) or his successor in title is entitled to plant variety protection therefor unless—

(1) before the date of determination by the breeder, or more than one year before the effective filing date of the application for protection the variety was (A) a public variety in this country or (B) effectively available to workers in this country and adequately described by a publication reasonably deemed a part of the public

technical knowledge in this country, which description must include a disclosure of the principal characteristics by which the variety is distinguished; or

(2) an application for protection based on the same breeder's acts was filed in a foreign country by the proprietor or his privies more than one year before the effective filing date actually in the United States; or

(3) another is entitled to an earlier date of determination and such other has continued a program of development and testing toward commercialization, or within six months of such earlier date publishes in the manner just described in (1)(B).

The Secretary could, by regulation, permit late filing (more than 1 year after a sale of the variety) in appropriate cases. An example of such a case might be where filing was delayed by a postal strike, as recently occurred in the case of patent applications.

Section 43. Reciprocity Limits.—Protection may be limited by regulation to U.S. nationals, except that

(1) this limitation does not apply where it would violate a treaty, and

(2) nationals of a foreign state in which they are domiciled will be entitled to so much of the protection here afforded as is afforded to U.S. nationals for the same genus and species.

Section 44. Public Interest In Wide Usage.—When necessary to insure an adequate supply of fiber, food, or feed in this country, the Secretary may declare a protected variety open to use for a reasonable royalty to the owner for up to 2 years.

CHAPTER 5.—APPLICATIONS: FORM, WHO MAY FILE, RELATING BACK, CONFIDENTIALITY

Section 51. Application for Recognition of Plant Variety Rights.—An application may be filed by the owner of the variety. An error in naming the breeder may be corrected at any time.

Section 52. Content of Application.—The application must contain the name and description of the variety, its genealogy and breeding procedure if known, a declaration that a viable sample of basic seed will be kept in a public repository, and a statement of the basis of the applicant's ownership.

Section 53. Joint Breeders.—One joint breeder may apply, naming the others. The certificate may be issued to such of the joint breeders as join in the application.

Section 54. Death or Incapacity of Breeder.—Legal representatives may apply in behalf of deceased or legally incapacitated breeders.

Section 55. Benefit of Earlier Filing Date.—An application is to be deemed filed on the earliest of the following dates:

(1) the date actually filed;

(2) the earliest date of filing in a foreign country which affords similar privileges in the case of applications filed in the United States by citizens of the United States, if the U.S. application was filed within 12 months thereafter;

(3) the earliest date of filing in the United States which has been continuously succeeded by applications filed before the issuance of a certificate or other termination of proceedings on a pending prior application.

Section 56. Confidential Status of Application.—This section requires applications to be kept confidential.

Section 57. Publication.—This section authorizes the Secretary to establish regulations for the publication of any pending application at the request of the owner.

CHAPTER 6.—EXAMINATION, RESPONSE TIME, INITIAL APPEALS

Section 61. Examination of Application.—This section provides for the examination of applications.

Section 62. Notice of Refusal; Reconsideration.—When an application is refused or an objection or requirement is made by the examiner, the Secretary is to notify the applicant. If, after receiving such notice, the applicant requests reconsideration, with or without amendment, the application shall be reconsidered. The applicant is allowed 6 months to take appropriate action after an adverse action, or such other time as the Secretary may set, plus upon payment of an additional fee an additional 3 months. The Secretary could set a shorter time than 6 months only in exceptional circumstances. The provision for a 3-month extension upon payment of an additional fee is designed to permit an applicant to avoid the time and trouble involved in obtaining an extension where he is willing to pay the fee.

Section 63. Initial Appeal.—When an application is refused by the examiner, an applicant may appeal to the Secretary who is required to seek the advice of the Plant Variety Protection Board.

CHAPTER 7.—APPEALS TO COURTS AND OTHER REVIEW

Section 71. Appeals.—From decisions made under sections 44, 63, 91, 92, and 128, appeal may be taken under the Federal Rules of Appellate Procedure. The Court of Customs and Patent Appeals and the U.S. Courts of Appeal shall have jurisdiction.

Section 72. Civil Action Against Secretary.—An applicant dissatisfied with a decision under section 63 or section 91 (which deals with reexamination after issue) may, as an alternative to appeal, have remedy by civil action against the Secretary in the U.S. District Court for the District of Columbia. In reviewing a Secretary's decision refusing plant variety protection, the court may adjudge the applicant entitled to such protection on compliance with the requirements of the act.

Section 73. Appeal or Civil Action in Contested Cases.—This section provides for a remedy by civil action as an alternative to appeal under section 71, for any party to a priority contest under section 92. A party contemplating an appeal is required to notify all adverse parties of his intention, and any adverse party except the Secretary may, by notice served within 10 days of the notice to him, elect that any review shall be by civil action.

CHAPTER 8.—CERTIFICATES OF PLANT VARIETY PROTECTION

Section 81. Plant Variety Protection. This section provides for issuance of a certificate of plant variety protection after a finding of entitlement and payment of fees.

Section 82. How Issued.—This section deals with the formalities of issuing and recording certificates.

Section 83. Contents and Terms of Plant Protection.—The certificate is to certify that the breeder has the right to exclude others from selling the variety, or offering it for sale, or reproducing it, or importing it, or exporting it, or using it in producing (as distinguished from developing) a hybrid or different variety therefrom to the extent provided by this act. At the election of the owner the certificate shall specify that seed of the variety shall be sold by variety name only as a class of certified seed and conform to the number of generations designated by the owner. The term of plant variety protection shall expire 17 years after the date of issue of the certificate, except that the Secretary may shorten the term by the amount of delay attributed to the applicant if the certificate is not issued within 3 years from the effective filing date. If the owner fails to comply with regulations relating to replenishing seed in a public repository, the certificate shall expire after notice and further failure to comply with the regulations within the time allowed thereafter (at least 3 months).

Section 84. Certificate of Correction of Plant Variety Protection Office Mistake.—This section provides for corrections of mistakes in certificates of plant variety protection clearly disclosed by the records of the Plant Variety Protection Office. This section gives more full relief than section 85. Under this section the correction of a Government mistake has effect from the date of issuance of the original certificate. Under section 85 correction of a mistake of the applicant only takes effect upon correction.

Section 85. Certificate of Correction of Applicant's Mistake.—This section provides for correction of good faith mistakes which are not the fault of the Office of Plant Variety Protection.

Section 86. Correction of Named Breeder.—This section provides that an error as to the naming of a breeder in an application shall not affect validity of plant variety protection and may be corrected at any time without depriving any person of any rights he otherwise would have had.

CHAPTER 9.—REEXAMINATION AFTER ISSUE, AND CONTESTED PROCEEDINGS

Section 91. Reexamination After Issue.—This section authorizes the Secretary to cause plant variety protection to be reexamined upon written notice by any person within 5 years after issuance of a certificate of facts which may have a bearing on the protectability of the variety.

Section 92. Priority Contest.—Where two applications of different applicants may be based on the same variety, the Secretary may—

- (1) Initiate a priority contest, or
- (2) Issue a certificate on the application having the earliest effective filing date, or
- (3) Issue a certificate naming both proprietors as alternative owners.

Where one applicant is named owner or alternative owner, the Secretary shall institute a priority contest upon the timely request of another applicant for protection for the same variety.

Section 93. Effect of Adverse Final Judgment or of Nonaction.—A final judgment on a priority contest, if adverse to an application and not appealed, shall constitute cancellation of any certificating on that application.

Nonaction or an adverse decision on a reexamination or priority contest shall not prejudice defense of an infringement suit or affirmative relief for a declaratory judgment. Thus a person having knowledge which may invalidate a certificate is not forced to enter a fight which may not settle the question anyway. He may go to court on it, if facts justify a suit for declaratory judgment. Or he may wait until there is more need to take such action, or until he is sued for infringement.

Section 94. Interfering Plant Variety Protection.—This section provides for a civil action by the owner of a certificate of plant variety provides tection against another owner of a certificate for the same variety, and the court may adjudge the validity of the respective certificates, or the ownership of the certificate. Determining ownership is especially applicable to a certificate issued jointly to rival claimants under section 92(a)(3).

TITLE III—PLANT VARIETY PROTECTION AND RIGHTS

CHAPTER 10.—OWNERSHIP AND ASSIGNMENT

Section 101. Ownership and Assignment.—This section provides that plant variety protection shall have the attributes of personal property; that applications, or any interest in a variety, shall be assignable in writing; and that assignments shall be void against a subsequent purchaser or mortgagee for a valuable consideration, without notice, unless recorded within 1 month from its date or at least 1 month prior to the date of such subsequent purchase or mortgage. This section also provides that specified forms of acknowledgment shall constitute prima facie evidence of an assignment.

Section 102. Ownership during testing.—This section provides a remedy against any person who, with notice of the owner's interest, diverts from authorized testing, or retains without authorization, seed or other sexually reproducible plant material which the owner has not made available to the public.

CHAPTER 11.—INFRINGEMENT OF PLANT VARIETY PROTECTION

Section 111. Infringement of plant variety protection.—This section sets out what shall amount to infringement of plant variety protection. Generally an infringement is the unauthorized exercise of a right given exclusively to the proprietor by a certificate of plant variety protection under section 83. However, this section is broader than section 83 in some respects and narrower in others. Since a remedy is provided for an infringement, the enforceable rights accorded by the bill are governed by this section. Infringement can occur before a certificate of plant variety protection is issued when a novel plant variety has been distributed with notice that propagation is prohibited. This more resembles copyright law than patent law. Justification for this may be found partly in the fact that infringement is expected almost never to be by independent work, but by willful reproduction starting from the protected variety itself.

The following acts performed without authority of the owner of the variety constitute infringement:

- (1) any transfer of title or possession, or offer to buy or sell, the novel variety;
- (2) importation or exportation of the novel variety;

- (3) sexual multiplication as a step in marketing the variety;
- (4) use of the novel variety in producing (as distinguished from developing) a hybrid or different variety;
- (5) use of seed marked "propagation prohibited" or progeny thereof to propagate the novel variety;
- (6) dispensation of the novel variety to another without notice that it is a protected variety;
- (7) performance of any of the foregoing in which the variety is multiplied asexually (except pursuant to a plant patent); or
- (8) inducing any of the foregoing.

Producing (as distinguished from developing) a hybrid or different variety means that use of the protected variety in producing the commercial class of seed of a variety constitutes infringement. Use of the protected variety as one source of germ plasma to breed a novel variety is permissible. As an example, the use of a protected inbred line of corn to cross it with another inbred line to produce a hybrid for commercial use, or production of a composite variety which is repeatedly reconstituted for commercial sale by intercrossing a set of seed lines one of which is protected, shall constitute an infringement. The use of such inbred line for hybridization with other materials to develop through breeding a novel inbred line as provided in section 114, however, does not constitute infringement; nor does the production of such new inbred line for the general market constitute infringement.

Section 112. Grandfather Clause.—Section 112 would protect a person who developed and produced a variety more than 1 year prior to the effective filing date of an adverse application, and his successor in interest, in his right to reproduce and sell such variety.

Section 113. Right to Save Seed. Crop Exemption.—This section authorizes a farmer to sell the crop produced from a protected variety for other than reproductive purposes; to save seed from such crop for future use or planting on the farm; or, if his primary farming occupation is the growing of crops for sale for other than reproductive purposes, to sell such saved seed for reproductive purposes to other persons so engaged.

Section 114. Research Exemption.—Use and production for research is not to constitute infringement.

Section 115. Intermediary exemption.—This section exempts carriers and advertising companies acting in the ordinary course of their business from infringement actions.

CHAPTER 12.—REMEDIES FOR INFRINGEMENT OF PLANT VARIETY PROTECTION, AND OTHER ACTIONS

Section 121. Remedy for infringement of plant variety protection.—A remedy by civil action is provided for infringement. Sale under the name of the protected variety constitutes a prima facie presumption that the variety sold is the same as that protected.

Section 122. Presumption of validity; defenses.—This section provides that certificates of plant variety protection shall be presumed valid. The burden of establishing invalidity rests on the party asserting invalidity. Subsection (b) requires that defenses to infringement actions be pleaded.

Section 123. Injunction.—This section authorizes injunctions to prevent violations of rights protected by the bill.

Section 124. Damages.—Damages for infringement are to be the higher of adequate compensation or a reasonable royalty, together with interest and costs, and the court may increase them up to three times the amount determined.

The court is to have discretion as to awarding damages where it finds the infringer has established innocent intentions and the infringement occurred prior to issuance of a certificate.

Section 125. Attorneys Fees.—In exceptional cases the court may award reasonable attorneys fees to the prevailing party.

Section 126. Time Limitation on Damages.—Infringement actions must be brought within 6 years after the infringement (or within 3 years after the owner learns of the infringement). Nothing in this section would prevent application of the doctrine of laches, which might result in the earlier barring of an action. In infringement cases against the United States, the period between receipt by the appropriate agency of a written claim and the mailing of a notice of denial of such claim shall not be counted in determining the period of limitation.

Section 127. Limitation of Damages; Marking and Notice.—No damages can be collected for infringement where a variety is distributed by authority of the owner and is received by the infringer without being marked "Propagation Prohibited" or (after the certificate issues) "U.S. Protected Variety", unless the infringer has actual knowledge that propagation is prohibited or that the variety is a protected variety.

Section 128. False Marketing, Cease and Desist Orders.—This section prohibits falsely representing that plant material is a U.S. protected variety or that an application for plant protection is pending. Use of the phrase "propagation prohibited" or similar phrase without reasonable basis is also prohibited. No reasonable basis exists for use of the phrase after it has been used for a year after testing has been completed, unless an application is pending or a certificate is in force. This section is enforceable by cease and desist order and civil damages.

Section 129. Nonresident Proprietors; Service and Notice.—This section provides for service of process on nonresident owners.

CHAPTER 13.—INTENT AND SEVERABILITY

Section 131. Intent.—This section recites the constitutional basis for the bill, principally the commerce and patent powers.

Section 132. Severability.—This section provides that if the bill is held unconstitutional as to some provisions or circumstances it shall remain in force as to the remainder.

CHAPTER 14.—TEMPORARY PROVISION AND RELATED ENACTMENTS; MISCELLANEOUS

Section 141. Effective Date.—The bill would be effective upon enactment.

Section 142. Amendment of Federal Seed Act.—This section adds a new title V to the Federal Seed Act to prohibit sale by variety name of seed which is required by a certificate of plant variety protection to be sold only as certified seed and which is not so certified.

This section also amends section 102 of the Federal Seed Act to provide that, when required by a certificate of plant variety protection, seed of the protected variety shall be certified only when the basic seed from which a variety was produced was furnished by authority of the owner of the variety, and shall conform to the number of generations designated by the certificate.

Section 143. Amendment of Judicial Code.—This section gives the Court of Customs and Patent Appeals and the courts of appeals jurisdiction of appeals under section 71 of the bill.

Section 144. Short Title.—This section provides a short title for the bill "Plant Variety Protection Act."

DEPARTMENTAL VIEWS

Department of Agriculture supports the objectives of the bill, but reserves comment on its specific provisions pending completion of an administration study of the laws protecting proprietary rights in the United States. Its report is as follows:

DEPARTMENT OF AGRICULTURE,
Washington, D.C., June 10, 1970.

HON. ALLEN J. ELLENDER,
Chairman, Committee on Agriculture and Forestry,
U.S. Senate.

DEAR MR. CHAIRMAN: This is in reply to your request of October 24, 1969, for a report on S. 3070, a bill "To encourage the development of novel varieties of sexually reproduced plants and making them available to the public, by making protection available to those who breed, develop, or discover them, thereby promoting progress in the useful art of agriculture."

This Department supports the objective of S. 3070.

We believe that it is desirable to provide incentive for private enterprise to undertake the research and development required to produce novel varieties of sexually produced plants. The proposed legislation would provide such incentive.

The Department is not prepared at this time to comment on the specific provisions of S. 3070. The administration has under consideration a number of important changes to the laws protecting proprietary rights in the United States. This review will have implications for programs such as the one proposed here. We wish to reserve further comment on the provisions of S. 3070 until we have had an opportunity to evaluate them in the light of the findings of this administration review.

The Bureau of the Budget advises that there is no objection to the presentation of this report from the standpoint of the administration's program.

Sincerely,

J. PHIL CAMPBELL,
Under Secretary.

Changes in Existing Law

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in *italic*, existing law in which no change is proposed is shown in roman):

Federal Seed Act

* * * * *

SEC. 102. Any labeling, advertisement, or other representation subject to this Act which represents that any seed is certified seed or any class thereof shall be deemed to be false in this respect unless (a) it has been determined by a seed certifying agency that such seed conformed to standards of genetic purity and identity as to kind or variety, and is in compliance with the rules and regulations of such agency pertaining to such seed; and (b) the seed bears an official label issued for such seed by a seed certifying agency certifying that the seed is of a specified class and a specified kind or variety. *Seed of a variety for which a certificate of plant variety protection under the Plant Variety Protection Act specifies sale only as a class of certified seed shall be certified only when*

“(1) the basic seed from which the variety was produced was furnished by authority of the owner of the variety if the certification is made during the term of protection, and

“(2) it conforms to the number of generations designated by the certificate, if the certificate contains such a designation.

* * * * *

TITLE V—SALE OF UNCERTIFIED SEED OF PROTECTED VARIETY

Section 501.

(a) *It shall be unlawful in the United States or in interstate or foreign commerce to sell by variety name seed not certified by an official seed certifying agency when it is a variety for which a certificate of plant variety protection under the Plant Variety Protection Act specifies sale only as a class of certified seed: Provided, That seed from a certified lot may be labeled as to variety name when used in a mixture by, or with the approval of, the owner of the variety.*



Calendar No. 1154

91ST CONGRESS
2^D SESSION

S. 3070

[Report No. 91-1138]

IN THE SENATE OF THE UNITED STATES

OCTOBER 23, 1969

Mr. MILLER (for himself, Mr. DOLE, Mr. EASTLAND, Mr. HOLLINGS, Mr. JORDAN of North Carolina, and Mr. YOUNG of North Dakota) introduced the following bill; which was read twice and referred to the Committee on Agriculture and Forestry

AUGUST 21 (legislative day, AUGUST 20), 1970

Reported by Mr. JORDAN of North Carolina, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To encourage the development of novel varieties of sexually reproduced plants and to make them available to the public, providing protection available to those who breed, develop, or discover them, and thereby promoting progress in agriculture in the public interest.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

INDEX

	Section
TITLE I Plant Variety Protection Office	1
TITLE II Protectability of Plant Varieties and Certificates of Protection	41
TITLE III Plant Variety Protection and Rights	101

~~TITLE I PLANT VARIETY PROTECTION~~

~~OFFICE~~

Chapter	Section
1. Organization and Publications	1
2. Legal Provisions as to the Plant Variety Protection Office	21
3. Plant Variety Protection Fees	31

~~Chapter 1. ORGANIZATION AND PUBLICATIONS~~

~~Section 1. Establishment.~~

~~There is hereby established in the Department of Agriculture a bureau to be known as the Plant Variety Protection Office, which shall have the functions set forth in this Act.~~

~~Sec. 2. Seal.~~

~~The Plant Variety Protection Office shall have a seal with which documents and certificates evidencing plant variety protection shall be authenticated.~~

~~Sec. 3. Officers and Employees.~~

~~(a) There shall be in the Plant Variety Protection Office a Commissioner of Plant Variety Protection, one Assistant Commissioner, and an appropriate staff. The Assistant Commissioner shall perform the duties pertaining to the office of Commissioner assigned to him by the Commissioner and shall fill the office of Commissioner during a vacancy in that office or in the absence of the Commissioner. The Com-~~

1 ~~missioner of Plant Variety Protection shall be appointed by~~
2 ~~the Secretary.~~

3 ~~(b) The Secretary is authorized to fix the per annum~~
4 ~~rate of basic compensation of each staff member in the Plant~~
5 ~~Variety Protection Office at not in excess of the maximum~~
6 ~~scheduled rate provided for positions in level V of section~~
7 ~~5316 of title 5, United States Code.~~

8 **~~Sec. 4. Restrictions on Employees as to Interest in Plant~~**
9 **~~Variety Protection.~~**

10 ~~Employees of the Plant Variety Protection Office, in-~~
11 ~~cluding the Commissioner and Assistant Commissioner, shall~~
12 ~~be ineligible during the periods of their employment, to apply~~
13 ~~for plant variety protection and to acquire directly or in-~~
14 ~~directly, except by inheritance or bequest, any right or~~
15 ~~interest in any matters before that office. This section shall~~
16 ~~not apply to members of the Plant Variety Protection Board~~
17 ~~who are not otherwise employees of the Plant Variety~~
18 ~~Protection Office.~~

19 **~~Sec. 5. Bond of Commissioner and Employees.~~**

20 ~~The Commissioner and such other employees as he des-~~
21 ~~ignates, before entering upon their duties, shall severally give~~
22 ~~bond, with sureties, the former in the sum of \$10,000, and~~
23 ~~the latter in sums prescribed by the Commissioner, condi-~~
24 ~~tioned for the faithful discharge of their respective duties and~~
25 ~~that they shall render to the proper officers of the Treasury~~

1 ~~a true account of all money received by virtue of their~~
2 ~~offices.~~

3 ~~**Sec. 6. Duties of Commissioner, Regulations.**~~

4 ~~The Commissioner, who shall report directly to the Sec-~~
5 ~~retary, shall superintend or perform all duties required here-~~
6 ~~under, and he shall have charge of property belonging to~~
7 ~~the Plant Variety Protection Office. He may establish regula-~~
8 ~~tions, not inconsistent with law, for the conduct of proceed-~~
9 ~~ings in the Plant Variety Protection Office after consultations~~
10 ~~with the Plant Variety Protection Board. All regulations~~
11 ~~issued pursuant to this title shall be subject to the approval of~~
12 ~~the Secretary.~~

13 ~~**Sec. 7. Plant Variety Protection Board.**~~

14 ~~(a) APPOINTMENT.—The Secretary shall appoint a~~
15 ~~Plant Variety Protection Board. The Board shall consist~~
16 ~~of individuals who, as a group, are expert in various areas of~~
17 ~~varietal development covered by this Act. Membership of~~
18 ~~the Board shall be drawn approximately equally from the~~
19 ~~private or seed industry sector and from the sector of govern-~~
20 ~~ment or the public. The Commissioner or his designee shall~~
21 ~~act as chairman of the Board without voting rights except~~
22 ~~in the case of ties.~~

23 ~~(b) FUNCTIONS OF BOARD.—The functions of the Plant~~
24 ~~Variety Protection Board shall include:~~

25 ~~(1) Advising the Commissioner concerning the~~

1 ~~adoption of Rules and Regulations to facilitate the proper~~
2 ~~administration of this Act;~~

3 ~~(2) Making advisory decisions on all appeals from~~
4 ~~the Examiner. The Board shall determine whether to~~
5 ~~act as a full Board or by panels it selects; and whether~~
6 ~~to review advisory decisions made by a panel. For serv-~~
7 ~~ice on such appeals, the Board may select, as temporary~~
8 ~~members, experts in the area to which the particular~~
9 ~~appeal relates; and-~~

10 ~~(3) Advising the Secretary on all questions under~~
11 ~~section 44.~~

12 ~~(c) COMPENSATION OF BOARD.—The members of the~~
13 ~~Plant Variety Protection Board shall serve without compen-~~
14 ~~sation except for standard government reimbursable expenses.~~

15 ~~Sec. 8. Library.~~

16 ~~The Commissioner shall maintain a library of scientific~~
17 ~~and other works and periodicals, both foreign and domestic,~~
18 ~~in the Plant Variety Protection Office to aid the officers in~~
19 ~~the discharge of their duties.~~

20 ~~Sec. 9. Register of Protected Plant Varieties.~~

21 ~~The Commissioner shall maintain a register of published~~
22 ~~specifications of United States protected plant varieties and~~
23 ~~a file of such other scientific and technical information as may~~
24 ~~be necessary or practicable.~~

1 ~~Sec. 10. Publications.~~

2 ~~(a) The Commissioner may publish, or cause to be pub-~~
3 ~~lished, in such format as he shall determine to be suitable, the~~
4 ~~following:~~

5 ~~(1) The specifications for plant variety protection~~
6 ~~including drawings and photographs.~~

7 ~~(2) The Official Journal of the Plant Variety Pro-~~
8 ~~tection Office, including annual indices.~~

9 ~~(3) Pamphlet copies of the plant variety protection~~
10 ~~laws and rules of practice and circulars or other publica-~~
11 ~~tions relating to the business of the Office.~~

12 ~~(b) The Plant Variety Protection Office may print the~~
13 ~~heading of the drawings or photographs for protected plant~~
14 ~~varieties for the purpose of photolithography and any lithog-~~
15 ~~raphy to appear on the same page.~~

16 ~~(c) The Commissioner may (1) establish public facili-~~
17 ~~ties for the searching of plant variety protection records and~~
18 ~~materials, and (2) from time to time, as through an informa-~~
19 ~~tion service, disseminate to the public those portions of the~~
20 ~~technological and other public information available to or~~
21 ~~within the Plant Variety Protection Office to encourage inno-~~
22 ~~vation and promote the progress of the useful arts.~~

23 ~~(d) The Commissioner may exchange any of the pub-~~
24 ~~lications specified for publications desirable for the use of the~~

~~1 Plant Variety Protection Office. The Commissioner may~~
~~2 exchange copies of specifications, drawings, and photographs~~
~~3 of United States protected plant varieties for copies of speci-~~
~~4 fications, drawings, and photographs of applications and pro-~~
~~5 tected plant varieties of foreign countries.~~

~~6 **Sec. 11. Copies for Public Libraries.**~~

~~7 The Commissioner may supply printed copies of speci-~~
~~8 fications, drawings, and photographs of protected plant varie-~~
~~9 ties to public libraries in the United States which shall main-~~
~~10 tain such copies for the use of the public.~~

~~11 **Chapter 2. LEGAL PROVISIONS AS TO THE PLANT**~~
~~12 **VARIETY PROTECTION OFFICE**~~

~~13 **Sec. 21. Day for Taking Action Falling on Saturday, Sun-**~~
~~14 **-day, or Holiday.**~~

~~15 When the day, or the last day, for taking any action or~~
~~16 paying any fee in the United States Plant Variety Protection~~
~~17 Office falls on Saturday, Sunday, a holiday within the District~~
~~18 of Columbia, or on any other day the Plant Variety Protec-~~
~~19 tion Office is closed for the receipt of papers, the action may~~
~~20 be taken or the fee paid, on the next succeeding business day.~~

~~21 **Sec. 22. Form of Papers Filed.**~~

~~22 The Commissioner may by regulations prescribe the form~~
~~23 of papers to be filed in the Plant Variety Protection Office.~~

1 ~~Sec. 23. Testimony in Plant Variety Protection Office~~
2 ~~Cases.~~

3 ~~The Commissioner may establish regulations for taking~~
4 ~~affidavits, depositions, and other evidence required in cases~~
5 ~~before the Plant Variety Protection Office. Any officer author-~~
6 ~~ized by law to take depositions to be used in the courts of the~~
7 ~~United States, or of the State where he resides, may take such~~
8 ~~affidavits and depositions, and swear the witnesses. If any~~
9 ~~person acts as a hearing officer by authority of the Commis-~~
10 ~~sioner, he shall have like power.~~

11 ~~Sec. 24. Subpoenas, Witnesses.~~

12 ~~(a) The clerk of any United States court for the district~~
13 ~~wherein testimony is to be taken in accordance with regula-~~
14 ~~tions established by the Commissioner for use in any con-~~
15 ~~tested case in the Plant Variety Protection Office shall, upon~~
16 ~~the application of any party thereof, issue a subpoena for any~~
17 ~~witness residing or being within such district or within one~~
18 ~~hundred miles of the stated place in such district, command-~~
19 ~~ing him to appear and testify before an officer in such~~
20 ~~district authorized to take depositions and affidavits, at the~~
21 ~~time and place stated in the subpoena. The provisions of the~~
22 ~~Federal Rules of Civil Procedure relating to the attendance~~
23 ~~of witnesses and the production of documents and things shall~~
24 ~~apply to contested cases in the Plant Variety Protection~~
25 ~~Office insofar as consistent with such regulations.~~

1 ~~(b) Every witness subpoenaed or in attendance shall be~~
 2 ~~allowed the fees and traveling expenses allowed to witnesses~~
 3 ~~attending the United States district courts.~~

4 ~~(c) A judge of a court whose clerk issued a subpoena~~
 5 ~~may enforce obedience to the process or punish disobedience~~
 6 ~~as in other like cases, on proof that a witness, served with~~
 7 ~~such subpoena, neglected or refused to appear or to testify.~~
 8 ~~No witness shall be deemed guilty of contempt for disobeying~~
 9 ~~such subpoena unless his fees and traveling expenses in going~~
 10 ~~to, and returning from, one day's attendance at the place~~
 11 ~~of examination, are paid or tendered him at the time of the~~
 12 ~~service of the subpoena; nor for refusing to disclose any~~
 13 ~~secret matter except upon appropriate order of the court~~
 14 ~~which issued the subpoena.~~

15 ~~**Sec. 25. Effect of Defective Execution.**~~

16 ~~Any document to be filed in the Plant Variety Protec-~~
 17 ~~tion Office and which is required by any law or regulation to~~
 18 ~~be executed in a specified manner may be provisionally ac-~~
 19 ~~cepted by the Commissioner despite a defective execution,~~
 20 ~~provided a properly executed document is submitted within~~
 21 ~~such time as may be prescribed.~~

22 ~~**Sec. 26. Regulations for Practice Before the Office.**~~

23 ~~The Commissioner, subject to the approval of the Secre-~~
 24 ~~tary, may prescribe regulations governing the recognition~~

1 ~~and conduct of persons representing applicants or other par-~~
2 ~~ties before the Plant Variety Protection Office. The Com-~~
3 ~~missioner may, after notice and opportunity for a hearing~~
4 ~~suspend or exclude, either generally or in any particular~~
5 ~~case, from further practice before the Office of Plant Variety~~
6 ~~Protection any person shown to be incompetent or disrepu-~~
7 ~~table or guilty of gross misconduct.~~

8 **~~Sec. 27. Unauthorized Practice.~~**

9 ~~Anyone who engages in direct or indirect practice before~~
10 ~~the Office of Plant Variety Protection while suspended or~~
11 ~~excluded under section 26, or without being either authorized~~
12 ~~to practice law where he maintains his office, or authorized~~
13 ~~by the Commissioner on the basis of having established his~~
14 ~~ability and character, shall be liable in a civil action for the~~
15 ~~return of all money received, and for compensation for~~
16 ~~damage done by such person and also may be enjoined from~~
17 ~~such practice. However there shall be no liability for damage~~
18 ~~if such person establishes that the work was done competently~~
19 ~~and without negligence. This section does not apply to any-~~
20 ~~one who, without a claim of self-sufficiency, works under~~
21 ~~the supervision of another, who is thus authorized and is~~
22 ~~the responsibility party; nor to anyone who establishes that~~
23 ~~he acted only on behalf of any employer by whom he was~~
24 ~~regularly employed.~~

1 ~~Chapter 3. PLANT VARIETY PROTECTION FEES~~

2 ~~Sec. 31. Plant Variety Protection Fees.~~

3 ~~(a) The Commissioner shall charge the following fees:~~

4 ~~(1) On filing each application for a certificate of~~
5 ~~plant variety protection, \$50.~~

6 ~~(2) For issuing each certificate of plant variety~~
7 ~~protection, \$50 unless the drawing or photograph to be~~
8 ~~reproduced is in color and in that event, \$75.~~

9 ~~(3) On appeal under section 63 of this title, for~~
10 ~~the first time from the examiner to the Plant Variety~~
11 ~~Protection Board, \$50. In addition, when consideration~~
12 ~~by the Plant Variety Protection Board is reached, \$50.~~

13 ~~(4) For certificate under section 85 or under sec-~~
14 ~~tion 86 of this title, \$15.~~

15 ~~(5) As available: For uncertified copies of specifi-~~
16 ~~cation, drawing, and photographs which have been pub-~~
17 ~~lished, such fees and charges as the Commissioner may~~
18 ~~establish.~~

19 ~~(6) For recording every assignment, agreement,~~
20 ~~or other paper relating to the property in a plant variety~~
21 ~~protection application, \$10: where the document re-~~
22 ~~lates to more than one plant variety protection applica-~~
23 ~~tion, \$1 for each additional item.~~

1 ~~(7) For each certificate certifying copies of records,~~
 2 ~~\$1.~~

3 ~~(8) For delayed payment or other action when~~
 4 ~~permitted upon payment of special fee, \$10.~~

5 ~~(b) The Commissioner may reduce any fees under this~~
 6 ~~section found to be in excess of direct costs.~~

7 ~~(c) The Commissioner may establish charges for copies~~
 8 ~~of records, publications, or services furnished by the Plant~~
 9 ~~Variety Protection Office, not specified above.~~

10 ~~Sec. 32. Payment of Plant Variety Protection Fees; Re-~~
 11 ~~turn of Excess Amounts.~~

12 ~~All fees shall be paid to the Commissioner, who shall~~
 13 ~~deposit the same in the Treasury of the United States in~~
 14 ~~such manner as the Secretary of the Treasury directs, and~~
 15 ~~the Commissioner may refund any sum paid by mistake~~
 16 ~~or in excess of the fee required.~~

17 ~~TITLE II PROTECTABILITY OF PLANT~~
 18 ~~VARIETIES AND CERTIFICATES OF PRO-~~
 19 ~~TECTION~~

Chapter	Section
4. Protectability of Plant Varieties	41
5. Applications: Form, Who May File, Relating Back, Confidentiality	51
6. Examination: Response Time, Initial Appeals	61
7. Appeals to Courts and Other Review	71
8. Certificates of Plant Variety Protection	81
9. Reexamination after Issue, and Contested Proceedings	91

~~Chapter 4. PROTECTABILITY OF PLANT~~

~~VARIETIES~~

~~Sec. 41. Definitions and Rules of Construction.~~

~~The definitions and rules of construction set forth in this section apply for the purposes of this title.~~

~~(a) The term "novel variety" may be represented by, without limitation, seed, transplants, clones, and plants, and is satisfied if there is:~~

~~(1) Distinctness in the sense that the variety clearly differs by one or more identifiable morphological, physiological or other characteristics, as to which a difference in genealogy may contribute evidence, from all prior varieties of public knowledge at the date of determination within the provisions of section 42; and~~

~~(2) Uniformity in the sense that any variations are describable, predictable and commercially acceptable; and~~

~~(3) Stability in the sense that the variety may be sexually reproduced with its distinctive characteristics, with a reasonable degree of reliability, or to a degree comparable to that of other varieties of the same kind.~~

~~(b) The terms "United States" and "this country"~~

1 ~~mean the United States of America, its territories and posses-~~
2 ~~sions, and the Commonwealth of Puerto Rico.~~

3 ~~(c) The term "effective filing date," includes the filing~~
4 ~~date to which an application for plant variety protection is~~
5 ~~entitled under the provisions of section 55 of this title.~~

6 ~~(d) The term "effective filing date actually in the United~~
7 ~~States," means the earliest filing date to which an application~~
8 ~~for plant variety protection is entitled under the provisions of~~
9 ~~section 55 (b) of this title, excluding section 55 (a).~~

10 ~~(e) The term "kind" means one or more related species~~
11 ~~or subspecies singly or collectively known by one common~~
12 ~~name, for example, soybean, flax, carrot, or radish.~~

13 ~~(f) The term "date of determination" means the date~~
14 ~~when there has been at least tentative determination that the~~
15 ~~variety has been sexually reproduced with recognized char-~~
16 ~~acteristics making it a novel variety, whether or not the~~
17 ~~novelty thereof has been determined.~~

18 ~~(g) The terms "breeder" and "discoverer" shall each~~
19 ~~include the other as shall the terms "breed," "develop" and~~
20 ~~"discovery". The breeders or discoverers are those who direct~~
21 ~~the final breeding, creating the novel variety or discover the~~
22 ~~novel variety and, in either case, direct the determination~~
23 ~~required by subsection (f).~~

24 ~~(h) The term "sexually reproduced" shall include re-~~

1 ~~peated sexual production through the reproduction system~~
2 ~~designated by the breeder.~~

3 ~~(i) The term "proprietor" when distinguished from~~
4 ~~"breeder" means the employer when the breeder's work was~~
5 ~~done for hire without contrary agreement, or other owner~~
6 ~~by assignment or operation of law; but otherwise may in-~~
7 ~~clude the applicant until his position is taken by his successor~~
8 ~~in title, after which, the term "applicant" may mean~~
9 ~~proprietor.~~

10 ~~(j) The term "basic seed" means the seed planted to~~
11 ~~produce certified or commercial seed.~~

12 ~~(k) The term "testing" includes the period during~~
13 ~~which there is testing of seed or other sexually reproducible~~
14 ~~plant material, before any sale thereof, even though such~~
15 ~~material may be given out, provided the purpose is for ex-~~
16 ~~perimental testing on behalf of the proprietor, with observa-~~
17 ~~tion by or reported to the proprietor (even though the crop~~
18 ~~is used or sold for other than seed).~~

19 ~~(l) The term "public variety" means a variety in this~~
20 ~~country which is known or used, other than by the breeders~~
21 ~~and their associates, or on sale; if other than secretly or for~~
22 ~~the purpose of experimenting or testing; or as individual~~
23 ~~plants not known to be either sexually self-reproducible or~~
24 ~~repeatedly producible sexually at will.~~

~~(m) A variety described in a publication as specified in section 42 (a) is "effectively available to workers in this country" if a source from which it can be purchased is indicated in a publication or readily determinable or if the publication teaches how to produce the variety from source material available to workers in this country.~~

~~Sec. 42. Right to Plant Variety Protection; Plant Varieties~~
~~Protectable.~~

~~Whoever is the breeder or the discoverer of any novel variety of sexually reproduced plants, except as excluded in section 45, or his successor in title, shall be entitled to plant variety protection therefor, subject to the conditions and requirements of this title unless one of the following bars exists:~~

~~(1) Before the date of determination thereof by the breeder, or more than one year before the effective filing date of the application therefor, the variety was (A) a public variety in this country, or (B) effectively available to workers in this country and adequately described by a publication reasonably deemed a part of the public technical knowledge in this country which description must include a disclosure of the principal characteristics by which the variety is distinguished.~~

~~(2) The variety, though not in use or on sale in this country, was in use or on sale elsewhere, other than secretly or for the purpose of experimenting or testing,~~

1 by or in the knowledge of the applicant or his predeces-
 2 sor in title, or their agents or representatives, more than
 3 one year before the effective date of the application there-
 4 for.

5 (3) An application for protection of the variety
 6 based on the same breeders acts, was filed in a foreign
 7 country by the proprietor or his privies more than one
 8 year before the effective filing date actually in the United
 9 States.

10 (4) Another is entitled to an earlier date of de-
 11 termination for the variety: *Provided, however,* That the
 12 benefit of a date of determination can be lost by not con-
 13 tinuing a program of development and testing to com-
 14 mercialization.

15 **Sec. 43. Reciprocity Limits.**

16 Protection under the Act shall be limited to proprietors
 17 who are nationals of the United States, except where this lim-
 18 itation would violate a treaty and except that proprietors
 19 who are nationals of a foreign state in which they are dom-
 20 iciled shall be entitled to so much of the protection here
 21 afforded as is afforded by said foreign state to nationals of the
 22 United States for the same genus and species.

23 **Sec. 44. Public Interest In Wide Usage.**

24 The Secretary may declare a protected variety open to

~~1 use on a basis of equitable remuneration to the proprietor,~~
~~2 not less than a reasonable royalty, when he determines that~~
~~3 such declaration is necessary in order to insure an adequate~~
~~4 supply of fiber, food or feed in this country and that the~~
~~5 proprietor is not supplying the public needs at a price which~~
~~6 may reasonably be deemed fair. Such declaration may be,~~
~~7 with or without limitation, with or without designation of~~
~~8 what the remuneration is to be; and shall be subject to re-~~
~~9 view as under section 71 or 72 (any finding that the price~~
~~10 is not reasonable being reviewable), and shall remain in~~
~~11 effect not more than two years. In the event litigation is~~
~~12 required to collect such remuneration, a higher rate may be~~
~~13 allowed by the court.~~

~~14 **Sec. 45. Exclusions From Eligibility for Protection.**~~

~~15 Protection under this Act shall not be available for:~~

~~16 (a) Fungi and Bacteria,~~

~~17 (b) Hybrids.~~

~~18 **Chapter 5.—APPLICATIONS: FORM, WHO MAY FILE,**~~
~~19 **RELATING BACK, CONFIDENTIALITY**~~

~~20 **Sec. 51. Application for Recognition of Plant Variety**~~
~~21 **Rights.**~~

~~22 (a) An application for a certificate of Plant Variety~~
~~23 Protection may be filed by either the breeder or the pro-~~
~~24 priator of the variety sought to be protected. The applica-~~
~~25 tion shall be made in writing to the Commissioner, shall be~~

1 ~~signed by or on behalf of the applicant, and shall be accom-~~
2 ~~panied by the prescribed fee. An application filed by a per-~~
3 ~~son not the breeder shall state the basis on which it is filed.~~

4 ~~(b) An error as to the naming of the breeder, without~~
5 ~~deceptive intent, may be corrected at any time, in accordance~~
6 ~~with regulation established by the Commissioner.~~

7 **~~Sec. 52. Content of Application.~~**

8 ~~An application for a certificate recognizing plant variety~~
9 ~~rights shall contain:~~

10 ~~(1) The name of the variety except that a tempo-~~
11 ~~rary designation will suffice until the certificate is to be~~
12 ~~issued.~~

13 ~~(2) A description of the variety setting forth its~~
14 ~~novelty and a description of the genealogy and breeding~~
15 ~~procedure, when known. The Commissioner may require~~
16 ~~amplification, including the submission of adequate~~
17 ~~photographs or drawings or plant specimens, if the~~
18 ~~description is not adequate or as complete as is reason-~~
19 ~~ably possible, and submission of records or proof of~~
20 ~~propriatorship or of allegations made in the application.~~
21 ~~A proprietor may add to or correct the description at~~
22 ~~any time, before the certificate is issued, upon a showing~~
23 ~~acceptable to the Commissioner that the revised descrip-~~
24 ~~tion is retroactively accurate. Courts shall protect others~~
25 ~~from any injustice which would result. The Commis-~~

1 ~~sioner may accept records of the originator and of any~~
2 ~~official seed certifying agency in this country as evidence~~
3 ~~of stability where applicable.~~

4 ~~(3) A declaration that a viable sample of basic seed~~
5 ~~necessary for propagation of the variety will be deposited~~
6 ~~and replenished periodically in a public repository in~~
7 ~~accordance with regulations to be established hereunder.~~
8 ~~This declaration may be added by amendment.~~

9 **~~Sec. 53. Joint Breeders.~~**

10 ~~(a) When two or more persons are the breeders, one~~
11 ~~(or his successor) may apply, naming the others.~~

12 ~~(b) The Commissioner, after such notice as he may~~
13 ~~prescribe, may issue a certificate of plant variety protection~~
14 ~~to the applicant and such of the other breeders as may have~~
15 ~~subsequently joined in the application.~~

16 **~~Sec. 54. Death or Incapacity of Breeder.~~**

17 ~~Legal representatives of deceased breeders and of those~~
18 ~~under legal incapacity may make application for plant vari-~~
19 ~~ety protection upon compliance with the requirements and~~
20 ~~on the same terms and conditions applicable to the breeder~~
21 ~~or proprietor.~~

22 **~~Sec. 55. Benefit of Earlier Filing Date.~~**

23 ~~(a) An application for plant variety protection for a~~
24 ~~variety filed in this country by a person who has, or whose~~

~~1 predecessor or successor in title has, previously filed an
2 application for plant variety protection for the same variety
3 by the same breeder in a foreign country which affords simi-
4 lar privileges in the case of applications filed in the United
5 States or to citizens of the United States, shall have the same
6 effect as the same application would have if filed in the
7 United States on the date on which the application for plant
8 variety protection for the same variety was first filed in any
9 foreign country, if the application in this country is filed
10 within twelve months from the earliest date on which such
11 foreign application was filed. No application shall be entitled
12 to a right of priority under this section, unless the applicant
13 designates the foreign application in his application or by
14 amendment thereto and, if required by the Commissioner,
15 furnishes such copy, translation or both, as the Commissioner
16 may specify.~~

~~17 (b) An application for a certificate of plant variety pro-
18 tection for the same variety as was the subject of an applica-
19 tion previously filed in the United States by or on behalf
20 of the same proprietor, or by his predecessor in title, shall
21 have the same effect as to such variety as though filed on
22 the date of the prior application if filed before the issuance
23 of the certificate or termination of proceedings on the first
24 application or on an application similarly entitled to the
25 benefit of the filing date of the first application and if it con-~~

1 ~~tains or is amended to contain a specific reference to the~~
 2 ~~earlier filed application.~~

3 ~~(c) A later application shall not by itself establish that~~
 4 ~~a characteristic newly described was in the variety at the~~
 5 ~~time of the earlier application.~~

6 ~~Sec. 56. Confidential Status of Application.~~

7 ~~Applications for plant variety protection and their con-~~
 8 ~~tents shall be kept in confidence by the Plant Variety Pro-~~
 9 ~~tection Office, by the Board, and by the offices in the De-~~
 10 ~~partment of Agriculture to which access may be given under~~
 11 ~~regulations. No information concerning the same shall be~~
 12 ~~given without the authority of the applicant or proprietor,~~
 13 ~~unless necessary under special circumstances as may be de-~~
 14 ~~termined by the Commissioner, except that the Commis-~~
 15 ~~sioner may publish the variety names designated in applica-~~
 16 ~~tions, stating the kind to which each applies.~~

17 ~~Sec. 57. Publication.~~

18 ~~The Commissioner may establish regulations for the~~
 19 ~~publication of pending applications at the request of the~~
 20 ~~proprietor.~~

21 ~~Chapter 6.—EXAMINATION, RESPONSE TIME, INI-~~ 22 ~~TIAL APPEALS~~

23 ~~Sec. 61. Examination of Application.~~

24 ~~The Commissioner shall cause an examination to be~~
 25 ~~made of the application and if on such examination it is~~

1 ~~determined that the applicant is entitled to plant variety~~
2 ~~protection under the law, the Commissioner shall issue a~~
3 ~~notice of allowance of plant variety protection therefor as~~
4 ~~hereinafter provided.~~

5 **~~Sec. 62. Notice of Refusal; Reconsideration.~~**

6 ~~(a) Whenever an application is refused, or any objection~~
7 ~~or requirement made by the examiner, the Commissioner~~
8 ~~shall notify the applicant thereof, stating the reasons therefor,~~
9 ~~together with such information and references as may be~~
10 ~~useful in judging the propriety of continuing the prosecution~~
11 ~~of the application; and if after receiving such notice the~~
12 ~~applicant requests reconsideration, with or without amend-~~
13 ~~ment, the application shall be reconsidered.~~

14 ~~(b) For taking appropriate action after a refusal, an~~
15 ~~applicant shall be allowed six months, or such other time as~~
16 ~~the Commissioner in exceptional circumstances shall set in the~~
17 ~~refusal, or such time as he may allow as an extension. With-~~
18 ~~out such extension, action may be taken up to three months~~
19 ~~late by paying a delayed filing fee.~~

20 **~~Sec. 63. Initial Appeal.~~**

21 ~~When an application for plant variety protection has been~~
22 ~~refused by the examiner, the applicant may appeal from the~~
23 ~~decision of the examiner to the Commissioner. The Commis-~~
24 ~~sioner shall seek the advice of the Plant Variety Protection~~
25 ~~Board on all appeals, before deciding the appeal.~~

1 ~~Chapter 7.—APPEALS TO COURTS AND OTHER~~
2 ~~REVIEW~~

3 ~~Sec. 71. Appeals.~~

4 ~~From decisions made on appeal within the Plant Variety~~
5 ~~Protection Office, and also under the provisions of section 92,~~
6 ~~appeal may be taken under the Federal Rules of Appellate~~
7 ~~Procedure. The Court of Customs and Patent Appeals shall~~
8 ~~have jurisdiction, without limitation to that court.~~

9 ~~Sec. 72. Civil Action Against Commissioner.~~

10 ~~An applicant dissatisfied with a decision under section 63~~
11 ~~or 91 of this title, may, as an alternative to appeal, have~~
12 ~~remedy by civil action against the Commissioner in the~~
13 ~~United States District Court for the District of Columbia.~~
14 ~~Such action shall be commenced within sixty days after such~~
15 ~~decision or within such further time as the Commissioner~~
16 ~~allows. The court may, in the case of review of a decision by~~
17 ~~the Commissioner refusing plant variety protection, adjudge~~
18 ~~that such applicant is entitled to receive a certificate of plant~~
19 ~~variety protection for his variety as specified in his applica-~~
20 ~~tion as the facts of the case may appear, on compliance with~~
21 ~~the requirements of this Act.~~

22 ~~Sec. 73. Appeal or Civil Action in Contested Cases.~~

23 ~~(a) A party to a proceeding under section 92 of this~~
24 ~~title, dissatisfied with the decision, may take an appeal under~~
25 ~~section 71 or may have remedy by civil action if commenced~~

~~1 within sixty days after such decision or within such further
2 time as the Commissioner allows. A party contemplating ap-
3 peal as provided herein shall notify any adverse party of his
4 intention and such adverse party, not the Commissioner, shall
5 have the right, by notice served within ten days of the notice
6 to him, to elect that any review shall be by civil action. In
7 such suits the record in the Plant Variety Protection Office
8 shall be admitted on motion of either party upon the terms
9 and conditions as to costs, expenses, and the further cross-
10 examination of witnesses, as the court imposes, without prej-
11 udice to the right of the parties to take further testimony.
12 The testimony and exhibits of the record in the Plant Variety
13 Protection Office when admitted shall have the same effect as
14 if originally taken and produced in the suit.~~

~~15 (b) Such suit may be instituted against the party in
16 interest as shown by the record of the Plant Variety Protec-
17 tion Office at the time of the decision complained of, but any
18 party in interest may become a party to the action. If there
19 be adverse parties residing in a plurality of districts not em-
20 braceed within the same State, or an adverse party residing
21 in a foreign country, the United States District Court for the
22 District of Columbia, or any United States district court to
23 which it may transfer the case, shall have jurisdiction and
24 may issue summons against the adverse parties directed to
25 the marshal of any district in which any adverse party resides.~~

~~1 Summons against adverse parties residing in foreign countries
2 may be served by publication or otherwise as the court
3 directs. The Commissioner shall not be made a party but he
4 shall have the right to intervene. Judgment of the court in
5 favor of the right of an applicant to plant variety protection
6 shall authorize the Commissioner to issue a certificate of plant
7 variety protection on the filing in the Plant Variety Protec-
8 tion Office of a certified copy of the judgment and on com-
9 pliance with the requirements of this Act.~~

~~10 Chapter 8. CERTIFICATES OF PLANT VARIETY
11 PROTECTION~~

~~12 Sec. 81. Plant Variety Protection.~~

~~13 (a) If it appears that the proprietor is entitled to plant
14 variety protection under the law, a written notice of allow-
15 ance shall be given or mailed to the proprietor. The notice
16 shall specify the sum, constituting the issue fee, which shall
17 be paid within one month thereafter.~~

~~18 (b) Upon timely payment of this sum, and provided
19 that deposit of seed has been made in accordance with sec-
20 tion 52 (c), the certificate of plant variety protection shall
21 issue.~~

~~22 (c) If any payment required by this section is not
23 timely made, but is submitted with the fee for delayed
24 payment within nine months after the due date, or within
25 such further time as the Commissioner may allow, it shall
26 be accepted.~~

1 ~~Sec. 82. How Issued.~~

2 ~~A certificate of plant variety protection shall be issued~~
3 ~~in the name of the United States of America under the seal~~
4 ~~of the Plant Variety Protection Office, and shall be signed~~
5 ~~by the Commissioner or have his signature placed thereon,~~
6 ~~and shall be recorded in the Plant Variety Protection Office.~~

7 ~~Sec. 83. Contents and Term of Plant Variety Protection.~~

8 ~~(a) Every certificate of plant variety protection shall~~
9 ~~certify that the breeder or proprietor, his heirs or assignees,~~
10 ~~has the right, during the term of the plant variety protection,~~
11 ~~to exclude others from selling the variety, or offering it~~
12 ~~for sale, or reproducing it, or importing it, or exporting it,~~
13 ~~or using it in producing (as distinguished from developing)~~
14 ~~a hybrid or different variety therefrom, to the extent pro-~~
15 ~~vided by this Act. If the proprietor so elects, the certificate~~
16 ~~shall also specify that in the United States seed of the variety~~
17 ~~shall be sold by variety name only as a class of certified~~
18 ~~seed and, if specified, shall also conform to the number of~~
19 ~~generations designated by the proprietor. Any rights, or all~~
20 ~~rights except those elected under the preceding sentence,~~
21 ~~may be waived; and the certificate shall conform to such~~
22 ~~waiver. The Commissioner may at his discretion permit such~~
23 ~~election or waiver to be made after certificating and amend~~
24 ~~the certificate accordingly, without retroactive effect.~~

25 ~~(b) The term of plant variety protection shall expire~~

~~1 seventeen years from the date of issue of the certificate in
2 the United States. If the certificate is not issued within
3 three years from the effective filing date, the Commissioner
4 may shorten the term by the amount of time attributed to
5 the applicant.~~

~~6 (c) The term of Plant Variety Protection shall also ex-
7 pire if a proprietor fails to comply with regulations, in force
8 at the time of certificating, relating to replenishing seed in
9 a public repository: *Provided, however,* That this expira-
10 tion shall not occur unless notice is mailed to the proprietor
11 and he fails, within the time allowed thereafter, not less than
12 three months, to comply with said regulations, paying the
13 delayed fee in section 31 (a) (8).~~

~~14 **Sec. 84. Certificate of Correction of Plant Variety Protec-**
15 **tion Office Mistake.**~~

~~16 Whenever a mistake in certificating a protected plant
17 variety, incurred through the fault of the Plant Variety
18 Protection Office, is clearly disclosed by the records of the
19 Office, the Commissioner may issue a certificate of correc-
20 tion stating the fact and nature of such mistake, under seal,
21 without charge, to be recorded in the records of plant variety
22 protection. A copy thereof shall be attached to each copy
23 of the application of the plant variety protection and such
24 certificate shall be considered as part of the original certifi-
25 cate of plant variety protection. Every such certificate of~~

1 ~~plant variety protection shall have the same effect and opera-~~
2 ~~tion in law on the trial of action as if the same had been~~
3 ~~originally issued in such corrected form. The Commissioner~~
4 ~~may issue a corrected certificate of plant variety protection~~
5 ~~without charge in lieu of and with like effect as a certificate~~
6 ~~of correction.~~

7 **~~Sec. 85. Certificate of Correction of Applicant's Mistake.~~**

8 ~~Whenever a mistake of a clerical or typographical na-~~
9 ~~ture, or of minor character, or in the description of the~~
10 ~~variety, which was not the fault of the Plant Variety Pro-~~
11 ~~tection Office, appears in certifying a plant variety protec-~~
12 ~~tion and a showing has been made that such mistake oc-~~
13 ~~curred in good faith, the Commissioner may, upon payment~~
14 ~~of the required fee, issue a certificate of correction, if the~~
15 ~~correction unquestionably could have been made before the~~
16 ~~certificate issued. Such certificate of plant variety protection~~
17 ~~shall have the same effect and operation in law on the trial~~
18 ~~of actions for causes thereafter arising as if the same had~~
19 ~~been originally issued in such corrected form.~~

20 **~~Sec. 86. Correction of Named Breeder.~~**

21 ~~An error as to the naming of a breeder in the applica-~~
22 ~~tion, without deceptive intent, shall not affect validity of plant~~
23 ~~variety protection and may be corrected at any time by the~~
24 ~~Commissioner in accordance with regulations established by~~

1 ~~him or upon order of a federal court before which the matter~~
2 ~~is called in question. Upon such correction the Commissioner~~
3 ~~shall issue a certificate accordingly. Such correction shall not~~
4 ~~deprive a breeder of any rights he otherwise would have had.~~

5 ~~Chapter 9.—REEXAMINATION AFTER ISSUE, AND~~
6 ~~CONTESTED PROCEEDINGS~~

7 ~~Sec. 91. Reexamination After Issue.~~

8 ~~(a) Any person may, within five years after the issu-~~
9 ~~ance of a certificate of plant variety protection, notify the~~
10 ~~Commissioner in writing of facts which may have a bearing~~
11 ~~on the protectability of the variety, and the Commissioner~~
12 ~~may cause such plant variety protection to be reexamined~~
13 ~~in the light thereof.~~

14 ~~(b) Reexamination of plant variety protection under~~
15 ~~this section and appeals shall be pursuant to the same pro-~~
16 ~~cedures and with the same rights as for original examina-~~
17 ~~tions. Abandonment of the procedure while subject to a rul-~~
18 ~~ing against the retention of the certificate shall result in can-~~
19 ~~cellation of the plant variety certificate thereon and notice~~
20 ~~thereof shall be endorsed on copies of the specification of the~~
21 ~~protected plant variety thereafter distributed by the Plant~~
22 ~~Variety Protection Office.~~

23 ~~(c) If a person acting under subsection (a), within the~~
24 ~~time specified above, makes a prima facie showing of facts~~
25 ~~needing proof, the Commissioner may direct that the reexami-~~

1 ~~nation include such interparty proceedings as he shall~~
2 ~~establish.~~

3 **~~Sec. 92. Priority Contest.~~**

4 ~~(a) If the Commissioner determines that two applica-~~
5 ~~tions of different breeders or proprietors may be based on the~~
6 ~~same variety, he may:~~

7 ~~(1) Initiate a priority contest on his own motion~~
8 ~~whether or not one of the applications may have been~~
9 ~~certificated; or~~

10 ~~(2) Issue a certificate on the application having the~~
11 ~~earliest effective filing date, with notice to all; or~~

12 ~~(3) Issue a certificate naming both proprietors as~~
13 ~~alternative owners, under a single variety name accept-~~
14 ~~able to both.~~

15 ~~(b) On request of one proprietor when a certificate has~~
16 ~~been issued naming another proprietor as an owner or alter-~~
17 ~~native owner, both having applied for protection on the same~~
18 ~~variety, the Commissioner shall institute a priority contest;~~
19 ~~except that a proprietor shall have forfeited his right to assert~~
20 ~~priority for the purpose of obtaining plant variety protection~~
21 ~~when an adverse certificate has issued if he fails to make the~~
22 ~~request within one year of the mailing of notice specified in~~
23 ~~part (2) above or if he fails to make the request within the~~
24 ~~period for taking action after refusal of his application on the~~
25 ~~basis of the adverse certificate.~~

1 ~~Sec. 93. Effect of Adverse Final Judgment or of Non~~
2 ~~Action.~~

3 ~~(a) A final judgment under section 92 adverse to an~~
4 ~~application from which no appeal or other review had been~~
5 ~~or can be taken or had shall constitute cancellation of any~~
6 ~~certificating on that application, and notice thereof shall be~~
7 ~~endorsed on copies of the specifications of the protected plant~~
8 ~~variety thereafter distributed by the Plant Variety Protection~~
9 ~~Office.~~

10 ~~(b) Any person who has not proceeded in accordance~~
11 ~~with the provision of this chapter shall not be foreclosed or~~
12 ~~in any way prejudiced with respect to the defense of an~~
13 ~~infringement suit or affirmative relief under declaratory judg-~~
14 ~~ment proceedings.~~

15 ~~(c) No person subject to an adverse decision in a pro-~~
16 ~~ceeding under this chapter shall be foreclosed with respect to~~
17 ~~asserting comparable grounds in defense of an infringement~~
18 ~~suit or as a basis for affirmative relief under declaratory judg-~~
19 ~~ment proceedings.~~

20 ~~Sec. 94. Interfering Plant Variety Protection.~~

21 ~~The proprietor of a certificate of plant variety protection~~
22 ~~may have relief against another proprietor of a certificate of~~
23 ~~the same variety, or in case alternate owners are named, by~~
24 ~~civil action, and the court may adjudge the question of~~
25 ~~validity of the respective certificates, or the ownership of the~~

1 certificate. The provisions of section 73 (b) of this title shall
 2 apply to actions brought under this section.

3 **~~TITLE III—PLANT VARIETY PROTECTION~~**
 4 **~~AND RIGHTS~~**

Chapter	Section
10. Ownership and Assignment-----	101
11. Infringement of Plant Variety Protection-----	111
12. Remedies for Infringement of Plant Variety Protection, and Other Actions-----	121
13. Intent and Severability-----	131
14. Temporary Provision and Related Enactments-----	141

5 **~~Chapter 10.—OWNERSHIP AND ASSIGNMENT~~**

6 **~~Sec. 101. Ownership and Assignment.~~**

7 (a) Subject to the provisions of this title, plant variety
 8 protection shall have the attributes of personal property.

9 (b) Applications for certificates of plant variety protec-
 10 tion, or any interest in a variety, shall be assignable by an
 11 instrument in writing. The proprietor may in like manner
 12 grant and convey an exclusive right to use of the variety in
 13 the whole or any specified part of the United States.

14 (c) A certificate of acknowledgment under the hand
 15 and official seal of a person authorized to administer oaths
 16 within the United States, or in a foreign country, of a diplo-
 17 matic or consular officer of the United States^u or an officer
 18 authorized to administer oaths whose authority is proved by
 19 a certificate of a diplomatic or consular officer of the United
 20 States, shall be prima facie evidence of the execution of an

1 ~~assignment, grant or conveyance of plant variety protection~~
2 ~~or application for plant variety protection.~~

3 ~~(d) An assignment, grant, conveyance or license shall~~
4 ~~be void as against any subsequent purchaser or mortgagee for~~
5 ~~a valuable consideration, without notice, unless it, or an~~
6 ~~acknowledgment by the assignor, and so forth, that there is~~
7 ~~such encumbrance, is recorded in the Plant Variety Protec-~~
8 ~~tion Office within one month from its date or one month prior~~
9 ~~to the date of such subsequent purchase or mortgage.~~

10 **~~Sec. 102. Ownership During Testing.~~**

11 ~~An owner who, with suitable notice, releases possession~~
12 ~~of seed or other sexually reproducible plant material for~~
13 ~~testing retains ownership with respect thereto; and any di-~~
14 ~~version from authorized testing, or any unauthorized reten-~~
15 ~~tion, of such material by anyone who has knowledge that~~
16 ~~it is under such notice, or who is chargeable with notice, is~~
17 ~~prohibited, and violates the property rights of the owner.~~
18 ~~Anyone receiving the material tagged or labeled with the~~
19 ~~notice is chargeable with the notice. The owner is entitled~~
20 ~~to remedy and redress in a civil action hereunder. No remedy~~
21 ~~available by state or local law is hereby excluded. No such~~
22 ~~notice shall be used, or if used be effective, when the owner~~
23 ~~has made identical sexually reproducible plant material~~
24 ~~available to the public, as by sale thereof.~~

1 ~~Chapter 11.—INFRINGEMENT OF PLANT VARIETY~~
2 ~~PROTECTION~~

3 ~~Sec. 111. Infringement of Plant Variety Protection.~~

4 Except as otherwise provided in this title, it shall be an
5 infringement of the rights of a proprietor of a novel variety
6 to perform without authority, any of the following acts in
7 the United States, or in commerce which can be regulated by
8 Congress or affecting such commerce, prior to expiration of
9 the right to plant variety protection but after either the issue
10 of the certificate or the distribution of a novel plant variety
11 with the notice under section 127:

12 (1) ~~sell the novel variety, or offer it or expose it for~~
13 ~~sale, deliver it, ship it, consign it, exchange it, or solicit~~
14 ~~an offer to buy it, or any other transfer of title or pos-~~
15 ~~session of it; except as otherwise provided herein;~~

16 (2) ~~import the novel variety into, or export it from,~~
17 ~~the United States;~~

18 (3) ~~multiply the novel variety as a step in market-~~
19 ~~ing (for growing purposes) the variety; or~~

20 (4) ~~use the novel variety in producing (as dis-~~
21 ~~tinguished from developing) a hybrid or different vari-~~
22 ~~ety therefrom; or~~

23 (5) ~~use seed which had been marked "propaga-~~

tion prohibited" or progeny thereof to propagate the novel variety; or

(6) dispense the novel variety to another, in a form which can be propagated, without notice as to being a protected variety under which it was received; or

(7) perform any of the foregoing acts even in instances in which the novel variety is multiplied other than sexually; or

(8) instigate or actively induce performance of any of the foregoing acts.

Sec. 112. Right To Save Seed.

Except under subsections (3) and (4) of section 111, it shall not infringe any right hereunder for a person to save seed and grow the resulting variety for his own use.

Sec. 113. Private Defense Against Delayed Application.

No plant variety protection under this Act shall abridge the rights of any person who had developed a variety or his successor in business to produce, reproduce or sell his own variety, beginning more than one year prior to the effective filing date of an adverse application for a certificate of plant variety protection.

Sec. 114. Crop Exemption.

It shall not be an infringement to sell seed grown from the protected variety, obtained (for growing) by authority

1 ~~of the proprietor or by saving seed under section 112, for use~~
2 ~~as food, feed, in manufacture or the like, if the sale is bona~~
3 ~~fide for that purpose, and is in channels which are usual for~~
4 ~~that purpose and in a manner exclusively for that purpose. A~~
5 ~~purchaser who diverts such seed from those channels to grow-~~
6 ~~ing purposes shall not be entitled to any benefit for lack of~~
7 ~~notice under section 127.~~

8 **~~Sec. 115. Research Exemption.~~**

9 ~~The use and reproduction of a protected variety for plant~~
10 ~~breeding or other bona fide research shall not constitute an~~
11 ~~infringement of the protection provided under this Act.~~

12 **~~Sec. 116. Intermediary Exemption.~~**

13 ~~It shall not be an infringement to deliver, ship, consign~~
14 ~~or other acts of transport or change of possession when per-~~
15 ~~formed by a mere carrier or other innocent intermediaries, or~~
16 ~~to offer for sale by an innocent advertising medium.~~

17 **~~Chapter 12.—REMEDIES FOR INFRINGEMENT OF~~**
18 **~~PLANT VARIETY PROTECTION, AND OTHER~~**
19 **~~ACTIONS~~**

20 **~~Sec. 121. Remedy for Infringement of Plant Variety Pro-~~**
21 **~~tection.~~**

22 ~~A proprietor shall have remedy by civil action for in-~~
23 ~~fringement of his plant variety protection under section 111.~~
24 ~~If a variety is sold under the name of a proprietor's variety as~~

1 ~~shown in his certificate, there is a prima facie presumption~~
2 ~~that it is the same variety.~~

3 **~~Sec. 122. Presumption of Validity; Defenses.~~**

4 ~~(a) Certificates of plant variety protection shall be pre-~~
5 ~~sumed valid. The burden of establishing invalidity of a plant~~
6 ~~variety protection shall rest on the party asserting invalidity.~~

7 ~~(b) The following shall be defenses in any action charg-~~
8 ~~ing infringement and shall be pleaded: (1) noninfringement,~~
9 ~~absence of liability for infringement, or unenforceability; (2)~~
10 ~~invalidity of the plant variety protection in suit on any~~
11 ~~ground specified in section 42 of this title as a condition for~~
12 ~~protectability; (3) invalidity of the plant variety protection~~
13 ~~in suit for failure to comply with any requirement of section~~
14 ~~52; (4) that the asserted infringement was performed un-~~
15 ~~der an existing certificate adverse to that asserted and prior~~
16 ~~to notice of the infringement; and (5) any other fact or~~
17 ~~act made a defense by this Act.~~

18 **~~Sec. 123. Injunction.~~**

19 ~~The several courts having jurisdiction of cases under this~~
20 ~~title may grant injunctions in accordance with the principles~~
21 ~~of equity to prevent the violation of any right hereunder on~~
22 ~~such terms as the court deems reasonable.~~

23 **~~Sec. 124. Damages.~~**

24 ~~(a) Upon finding for the proprietor the court shall~~
25 ~~award damages adequate to compensate for the infringement~~

1 ~~but in no event less than a reasonable royalty for the use~~
2 ~~made of the variety by the infringer, together with interest~~
3 ~~and costs as fixed by the court.~~

4 ~~(b) When the damages are not determined by the jury,~~
5 ~~the court shall determine them. In either event the court may~~
6 ~~increase the damages up to three times the amount deter-~~
7 ~~mined.~~

8 ~~(c) The court may receive expert testimony as an aid~~
9 ~~to the determination of damages or of what royalty would~~
10 ~~be reasonable under the circumstances.~~

11 ~~(d) As to infringement prior to, or resulting from a~~
12 ~~planting prior to, issuance of a certificate for the infringed~~
13 ~~variety, a court finding the infringer to have established~~
14 ~~innocent intentions, shall have discretion as to awarding~~
15 ~~damages.~~

16 **~~Sec. 125. Attorney Fees.~~**

17 ~~The court in exceptional cases may award reasonable~~
18 ~~attorney fees to the prevailing party.~~

19 **~~Sec. 126. Time Limitation on Damages.~~**

20 ~~(a) No recovery shall be had for any infringement~~
21 ~~committed more than six years (or three years with knowl-~~
22 ~~edge of the proprietor) prior to the filing of the complaint~~
23 ~~or counterclaim for infringement in the action.~~

24 ~~(b) In the case of claims against the United States~~

~~1 Government for unauthorized use of a protected variety, the
2 period before bringing suit, up to six years, between the date
3 of receipt of written claim for compensation by the depart-
4 ment or agency of the Government having authority to settle
5 such claim, and the date of mailing by the Government of a
6 notice to the claimant that his claim has been denied shall
7 not be counted as part of the period referred to in the pre-
8 ceding paragraph.~~

~~9 **Sec. 127. Limitation of Damages; Marking and Notice.**~~

~~10 Proprietors may give notice to the public by physically
11 associating with or affixing to the container of seed of a novel
12 variety or by fixing to the novel variety, a label containing
13 the words "Propagation Prohibited" and after the certificate
14 issues, such additional words as "U.S. Protected Variety".
15 In the event the novel variety is distributed by authorization
16 of the proprietor and is received by the infringer without
17 such marking, no damages shall be recovered against such
18 infringer by the proprietor in any action for infringement,
19 except on proof that the infringer was notified of the in-
20 fringement and continued to infringe thereafter, in which
21 event damages may be recovered only for infringement oc-
22 curring after such notice. As to both damages and injunc-
23 tion, a court shall have discretion to be lenient as to disposal
24 of materials acquired in good faith by acts prior to such
25 notice.—~~

1 ~~Sec. 128. False Marking.~~

2 ~~(a) Each of the following acts, if performed in connec-~~
3 ~~tion with the sale, offering for sale, or advertising of sexually~~
4 ~~reproducible plant material, is prohibited, and the Commis-~~
5 ~~sioner may, if he determines after an opportunity for hear-~~
6 ~~ing that the act is being so performed, issue an order to~~
7 ~~cease and desist, said order being binding unless appealed~~
8 ~~to the appropriate United States Court of Appeals under~~
9 ~~the Federal Rules of Appellate Procedure:~~

10 ~~(1) Use of the words "U.S. Protected Variety"~~
11 ~~or any word or number importing that the material is~~
12 ~~a variety protected under certificate, when it is not.~~

13 ~~(2) Use of any wording importing that the ma-~~
14 ~~terial is a variety for which an application for plant~~
15 ~~variety protection is pending, when it is not.~~

16 ~~(3) Use of the phrase "propagation prohibited" or~~
17 ~~similar phrase without reasonable basis, a statement of~~
18 ~~this basis being promptly filed with the Commissioner if~~
19 ~~the phrase is used beyond experimental testing and no~~
20 ~~application has been filed. Any reasonable basis expires~~
21 ~~one year after commencement of use of the phrase be-~~
22 ~~yond experimental testing except as justified thereafter~~
23 ~~by a pending application or a certificate still in force.~~

24 ~~(b) Anyone convicted of violating a binding cease and~~

1 ~~desist order, or of performing any act prohibited in sub-~~
2 ~~section (a) of this section for the purpose of deceiving the~~
3 ~~public, shall be fined not more than \$10,000 and not less~~
4 ~~than \$500.~~

5 ~~(c) Anyone whose business is damaged or is likely to~~
6 ~~be damaged by an act prohibited in subsection (a) of this~~
7 ~~section, or is subjected to competition in connection with~~
8 ~~which such act is performed, may have remedy by civil~~
9 ~~action.~~

10 **~~Sec. 129. Nonresident Proprietors; Service and Notice.~~**

11 ~~Every proprietor not residing in the United States may~~
12 ~~file in the Plant Variety Protection Office a written designa-~~
13 ~~tion stating the name and address of a person residing~~
14 ~~within the United States on whom may be served process~~
15 ~~or notice of proceedings affecting the plant variety protec-~~
16 ~~tion or rights thereunder. If the person designated cannot~~
17 ~~be found at the address given in the last designation, or if~~
18 ~~no person has been designated, the United States District~~
19 ~~Court for the District of Columbia shall have jurisdiction~~
20 ~~and summons shall be served by publication or otherwise as~~
21 ~~the court directs. The court shall have the same jurisdiction~~
22 ~~to take any action respecting the plant variety protection, or~~
23 ~~rights thereunder that it would have if the proprietor were~~
24 ~~personally within the jurisdiction of the court.~~

1 ~~Chapter 13. INTENT AND SEVERABILITY~~

2 ~~Sec. 131. Intent.~~

3 ~~It is the intent of Congress to provide the indicated~~
4 ~~protection for new varieties by exercise of any constitutional~~
5 ~~power needed for that end, so as to afford adequate encour-~~
6 ~~agement for research, and for marketing when appropriate,~~
7 ~~to yield for the public the benefits of new varieties. Consti-~~
8 ~~tutional clauses 3 and 8 of article I, section 8 are both relied~~
9 ~~upon.~~

10 ~~Sec. 132. Severability.~~

11 ~~If this Act is held unconstitutional as to some provisions~~
12 ~~or circumstances, it shall remain in force as to the remainder~~
13 ~~or with necessary implied limitations as to other circum-~~
14 ~~stances, except that in no event may a provision, because a~~
15 ~~stated exemption from that provision is invalid, be effective~~
16 ~~in the area of that exemption.~~

17 ~~Chapter 14. TEMPORARY PROVISION AND RE-~~
18 ~~LATED ENACTMENTS~~

19 ~~Sec. 141. Effective Date.~~

20 ~~The foregoing Act shall take effect upon approval.~~
21 ~~Applications may be filed with the Secretary and held by him~~
22 ~~until the Office of Plant Variety Protection is organized and~~
23 ~~in operation.~~

24 ~~Sec. 142. Amendment of Federal Seed Act.~~

1 ~~The Federal Seed Act (53 Stat. 1275) is amended as~~
 2 ~~follows:~~

3 ~~(a) By adding at the end thereof:~~

4 ~~**"TITLE V SALE OF UNCERTIFIED SEED OF**~~
 5 ~~**PROTECTED VARIETY**~~

6 ~~**"Section 501.**~~

7 ~~"(a) It shall be unlawful in the United States or in in-~~
 8 ~~terstate or foreign commerce to sell by variety name seed not~~
 9 ~~certified by an official seed certifying agency when it is a~~
 10 ~~variety for which a certificate of plant variety protection~~
 11 ~~under the Plant Variety Protection Act specifies sale only~~
 12 ~~as a class of certified seed: *Provided*, That such seed may~~
 13 ~~be labeled as to variety name when used in a mixture by, or~~
 14 ~~with the approval of, the proprietor of the variety."~~

15 ~~(b) By adding at the end of section 102 the following~~
 16 ~~wording: Seed shall be certified only when the basic seed~~
 17 ~~from which a variety was produced was furnished by the~~
 18 ~~originator of the variety, his successor in title, and, when~~
 19 ~~specified, conforms to the number of generations designated~~
 20 ~~by the originator.~~

21 ~~**Sec. 143. Amendment of Judicial Code.**~~

22 ~~Title 28 of the United States Code, entitled Judicial~~
 23 ~~Code and Judiciary, is amended as follows:~~

24 ~~(a) After section 1544 add:~~

1 **Sec. 3. Organization.**

2 *The organization of the Plant Variety Protection Office*
3 *shall, except as provided herein, be determined by the Secre-*
4 *tary of Agriculture (hereinafter called the Secretary). The*
5 *office shall devote itself substantially exclusively to the*
6 *administration of this Act.*

7 **Sec. 4. Restrictions on Employees as to Interest in Plant**
8 **Variety Protection.**

9 *Employees of the Plant Variety Protection Office shall*
10 *be ineligible during the periods of their employment, to apply*
11 *for plant variety protection and to acquire directly or in-*
12 *directly, except by inheritance or bequest, any right or*
13 *interest in any matters before that office. This section shall*
14 *not apply to members of the Plant Variety Protection Board*
15 *who are not otherwise employees of the Plant Variety Protec-*
16 *tion Office.*

17 **Sec. 5. Bond of Employees.**

18 *Such employees as the Secretary designates, before enter-*
19 *ing upon their duties, shall severally give bond, with sureties,*
20 *in sums prescribed by the Secretary, conditioned for the*
21 *faithful discharge of their respective duties and that they*
22 *shall render to the proper officers of the Treasury a true*
23 *account of all money received by virtue of their offices.*

24 **Sec. 6. Regulations.**

25 *The Secretary may establish regulations, not inconsistent*

1 *with law, for the conduct of proceedings in the Plant Variety*
2 *Protection Office after consultations with the Plant Variety*
3 *Protection Board.*

4 ***Sec. 7. Plant Variety Protection Board.***

5 (a) *APPOINTMENT.*—The Secretary shall appoint a
6 *Plant Variety Protection Board. The Board shall consist*
7 *of individuals who are experts in various areas of varietal*
8 *development covered by this Act. Membership of the Board*
9 *shall include farmer representation and shall be drawn ap-*
10 *proximately equally from the private or seed industry sector*
11 *and from the sector of government or the public. The Secre-*
12 *tary or his designee shall act as chairman of the Board with-*
13 *out voting rights except in the case of ties.*

14 (b) *FUNCTIONS OF BOARD.*—The functions of the
15 *Plant Variety Protection Board shall include:*

16 (1) *Advising the Secretary concerning the adop-*
17 *tion of Rules and Regulations to facilitate the proper*
18 *administration of this Act;*

19 (2) *Making advisory decisions on all appeals from*
20 *the examiner. The Board shall determine whether to*
21 *act as a full Board or by panels it selects; and*
22 *whether to review advisory decisions made by a panel.*
23 *For service on such appeals, the Board may select, as*
24 *temporary members, experts in the area to which the*
25 *particular appeal relates; and*

1 (3) *Advising the Secretary on all questions under*
2 *section 44.*

3 (c) *COMPENSATION OF BOARD.*—*The members of the*
4 *Plant Variety Protection Board shall serve without compen-*
5 *sation except for standard government reimbursable expenses.*
6 *Sec. 8. Library.*

7 *The Secretary shall maintain a library of scientific*
8 *and other works and periodicals, both foreign and domestic,*
9 *in the Plant Variety Protection Office to aid the officers in*
10 *the discharge of their duties.*

11 *Sec. 9. Register of Protected Plant Varieties.*

12 *The Secretary shall maintain a register of published*
13 *specifications of United States protected plant varieties and*
14 *a file of such other scientific and technical information as may*
15 *be necessary or practicable.*

16 *Sec. 10. Publications.*

17 (a) *The Secretary may publish, or cause to be published,*
18 *in such format as he shall determine to be suitable, the*
19 *following:*

20 (1) *The specifications for plant variety protection*
21 *including drawings and photographs.*

22 (2) *The Official Journal of the Plant Variety Pro-*
23 *tection Office, including annual indices.*

24 (3) *Pamphlet copies of the plant variety protection*

laws and rules of practice and circulars or other publications relating to the business of the Office.

(b) The Plant Variety Protection Office may print the heading of the drawings or photographs for protected plant varieties for the purpose of photolithography and may provide suitable copy for any lithography to appear on the same page.

(c) The Secretary may (1) establish public facilities for the searching of plant variety protection records and materials, and (2) from time to time, as through an information service, disseminate to the public those portions of the technological and other public information available to or within the Plant Variety Protection Office to encourage innovation and promote the progress of the useful arts.

(d) The Secretary may exchange any of the publications specified for publications desirable for the use of the Plant Variety Protection Office. The Secretary may exchange copies of specifications, drawings, and photographs of United States protected plant varieties for copies of specifications, drawings, and photographs of applications and protected plant varieties of foreign countries.

Sec. 11. Copies for Public Libraries.

The Secretary may supply printed copies of specifications, drawings, and photographs of protected plant varieties

1 *to public libraries in the United States which shall maintain*
2 *such copies for the use of the public.*

3 **Chapter 2.—LEGAL PROVISIONS AS TO THE PLANT**
4 **VARIETY PROTECTION OFFICE**

5 **Sec. 21. Day for Taking Action Falling on Saturday, Sun-**
6 **day, or Holiday.**

7 *When the day, or the last day, for taking any action or*
8 *paying any fee in the United States Plant Variety Protection*
9 *Office falls on Saturday, Sunday, a holiday within the District*
10 *of Columbia, or on any other day the Plant Variety Protec-*
11 *tion Office is closed for the receipt of papers, the action may*
12 *be taken or the fee paid, on the next succeeding business day.*

13 **Sec. 22. Form of Papers Filed.**

14 *The Secretary may by regulations prescribe the form*
15 *of papers to be filed in the Plant Variety Protection Office.*

16 **Sec. 23. Testimony in Plant Variety Protection Office**
17 **Cases.**

18 *The Secretary may establish regulations for taking affi-*
19 *davits, depositions, and other evidence required in cases be-*
20 *fore the Plant Variety Protection Office. Any officer author-*
21 *ized by law to take depositions to be used in the courts of the*
22 *United States, or of the State where he resides, may take such*
23 *affidavits and depositions, and swear the witnesses. If any*
24 *person acts as a hearing officer by authority of the Secretary,*
25 *he shall have like power.*

1 **Sec. 24. Subpenas, Witnesses.**

2 (a) *The clerk of any United States court for the district*
3 *wherein testimony is to be taken in accordance with regula-*
4 *tions established by the Secretary for use in any contested*
5 *case in the Plant Variety Protection Office shall, upon the*
6 *application of any party thereof, issue a subpoena for any*
7 *witness residing or being within such district or within one*
8 *hundred miles of the stated place in such district, command-*
9 *ing him to appear and testify before an officer in such district*
10 *authorized to take depositions and affidavits, at the time and*
11 *place stated in the subpoena. The provisions of the Federal*
12 *Rules of Civil Procedure relating to the attendance of wit-*
13 *nesses and the production of documents and things shall apply*
14 *to contested cases in the Plant Variety Protection Office inso-*
15 *far as consistent with such regulations.*

16 (b) *Every witness subpoenaed or testifying shall be al-*
17 *lowed the fees and traveling expenses allowed to witnesses at-*
18 *tending the United States district courts.*

19 (c) *A judge of a court whose clerk issued a subpoena*
20 *may enforce obedience to the process or punish disobedience*
21 *as in other like cases, on proof that a witness, served with*
22 *such subpoena, neglected or refused to appear or to testify.*
23 *No witness shall be deemed guilty of contempt for disobeying*
24 *such subpoena unless his fees and traveling expenses in going*
25 *to, and returning from, one day's attendance at the place*

1 of examination, are paid or tendered him at the time of the
2 service of the subpoena; nor for refusing to disclose any
3 secret matter except upon appropriate order of the court
4 which issued the subpoena or of the Secretary.

5 **Sec. 25. Effect of Defective Execution.**

6 Any document to be filed in the Plant Variety Protec-
7 tion Office and which is required by any law or regulation to
8 be executed in a specified manner may be provisionally ac-
9 cepted by the Secretary despite a defective execution, pro-
10 vided a properly executed document is submitted within such
11 time as may be prescribed.

12 **Sec. 26. Regulations for Practice Before the Office.**

13 The Secretary shall prescribe regulations governing the
14 admission to practice and conduct of persons representing
15 applicants or other parties before the Plant Variety Pro-
16 tection Office. The Secretary may, after notice and oppor-
17 tunity for a hearing, suspend or exclude, either generally or
18 in any particular case, from further practice before the Of-
19 fice of Plant Variety Protection any person shown to be in-
20 competent or disreputable or guilty of gross misconduct.

21 **Sec. 27. Unauthorized Practice.**

22 Anyone who in the United States engages in direct or
23 indirect practice before the Office of Plant Variety Pro-
24 tection while suspended or excluded under section 26, or
25 without being admitted to practice before the Office, shall be

1 *liable in a civil action for the return of all money received,*
2 *and for compensation for damage done by such person and*
3 *also may be enjoined from such practice. However, there shall*
4 *be no liability for damage if such person establishes that the*
5 *work was done competently and without negligence. This*
6 *section does not apply to anyone who, without a claim of*
7 *self-sufficiency, works under the supervision of another who*
8 *stands admitted and is the responsible party; nor to anyone*
9 *who establishes that he acted only on behalf of any employer*
10 *by whom he was regularly employed.*

11 **Chapter 3.—PLANT VARIETY PROTECTION FEES**

12 **Sec. 31. Plant Variety Protection Fees; Appropriations.**

13 *The Secretary shall, under such regulations as he may*
14 *prescribe, charge and collect reasonable fees for services per-*
15 *formed under this Act. The fees authorized by this section*
16 *shall be established to substantially cover the costs or admin-*
17 *istration of this Act. Such fees shall be deposited into a fund*
18 *to be available, without fiscal year limitation, for the admin-*
19 *istration of this Act. The initial capital of the fund shall con-*
20 *sist of appropriations, which are hereby authorized to be*
21 *made. Until such time as the Secretary prescribes fees as*
22 *provided by this section, a fee of \$50 shall be charged for*
23 *filing each application, subject to such adjustment as may be*
24 *appropriate after fees are prescribed by the Secretary*
25 *hereunder.*

1 *Sec. 32. Payment of Plant Variety Protection Fees; Re-*
2 *turn of Excess Amounts.*

3 *All fees shall be paid to the Secretary, and the Secretary*
4 *may refund any sum paid by mistake or in excess of the fee*
5 *required.*

6 **TITLE II—PROTECTABILITY OF PLANT VARIETIES**
7 **AND CERTIFICATES OF PROTECTION**

<i>Chapter</i>	<i>Section</i>
<i>4. Protection of Plant Varieties-----</i>	<i>41</i>
<i>5. Applications: Form, Who May File, Relating Back, Confiden-</i> <i>tiality -----</i>	<i>51</i>
<i>6. Examination: Response Time, Initial Appeals-----</i>	<i>61</i>
<i>7. Appeals to Courts and Other Review-----</i>	<i>71</i>
<i>8. Certificates of Plant Variety Protection-----</i>	<i>81</i>
<i>9. Reexamination After Issue, and Contested Proceedings-----</i>	<i>91</i>

8 **Chapter 4.—PROTECTABILITY OF PLANT**
9 **VARIETIES**

10 *Sec. 41. Definitions and Rules of Construction.*

11 *The definitions and rules of construction set forth in this*
12 *section apply for the purposes of this Act.*

13 *(a) The term “novel variety” may be represented by,*
14 *without limitation, seed, transplants, and plants, and is satis-*
15 *fied if there is:*

16 *(1) Distinctness in the sense that the variety clearly*
17 *differs by one or more identifiable morphological, physio-*
18 *logical or other characteristics (which may include those*
19 *evidenced by processing or product characteristics, for*
20 *example, milling and baking characteristics in the case*
21 *of wheat) as to which a difference in genealogy may con-*

tribute evidence, from all prior varieties of public knowledge at the date of determination within the provisions of section 42; and

(2) Uniformity in the sense that any variations are describable, predictable and commercially acceptable; and

(3) Stability in the sense that the variety, when sexually reproduced or reconstituted, will remain unchanged with regard to its essential and distinctive characteristics with a reasonable degree of reliability commensurate with that of varieties of the same category in which the same breeding method is employed.

(b) The terms "United States" and "this country" mean the United States of America, its territories and possessions, and the Commonwealth of Puerto Rico.

(c) The term "kind" means one or more related species or subspecies singly or collectively known by one common name, for example, soybean, flax, carrot, or radish.

(d) The term "date of determination" means the date when there has been at least tentative determination that the variety has been sexually reproduced with recognized characteristics, whether or not the novelty of those characteristics has been determined.

(e) The term "breeder" shall mean the person who—

1 (1) directs the final breeding creating the novel
2 variety, or

3 (2) discovers the novel variety, and
4 makes the tentative determination described in subsection (d).
5 Where such actions are conducted by an agent on behalf of
6 his principal, the principal, rather than the agent, shall be
7 considered the breeder. The terms “breed”, “develop”, “origi-
8 nate”, and “discover”, and derivatives thereof shall each in-
9 clude the other.

10 (f) The term “sexually reproduced” shall include any
11 production of a variety by seed.

12 (g) The term “basic seed” means the seed planted to
13 produce certified or commercial seed.

14 (h) The term “testing” means testing or experimental
15 use of a variety before any sale thereof. Sale for other than
16 seed purposes of seed or other plant material produced as the
17 result of testing shall not constitute a sale for the purpose of
18 the preceding sentence or for the purpose of the following
19 subsection.

20 (i) The term “public variety” means a variety sold or
21 used in this country, or existing in and publicly known in
22 this country; but use for the purpose of testing, or sale or
23 use as individual plants not known to be sexually repro-
24 ducible, shall not make the variety a public variety.

25 (j) A variety described in a publication as specified in

1 section 42(a)(1)(B) is "effectively available to workers in
 2 this country" if a source from which it can be purchased is
 3 indicated in such publication or readily determinable or if
 4 such publication teaches how to produce the variety from
 5 source-material effectively available to workers in this country.

6 **Sec. 42. Right to Plant Variety Protection; Plant Varieties**
 7 **Protectable.**

8 (a) The breeder of any novel variety of sexually re-
 9 produced plant (other than fungi, bacteria, or first genera-
 10 tion hybrids) who has so reproduced the variety, or his
 11 successor in interest, shall be entitled to plant variety pro-
 12 tection therefor, subject to the conditions and requirements
 13 of this title unless one of the following bars exists:

14 (1) Before the date of determination thereof by the
 15 breeder, or more than one year before the effective filing
 16 date of the application therefor, the variety was (A) a
 17 public variety in this country, or (B) effectively avail-
 18 able to workers in this country and adequately described
 19 by a publication reasonably deemed a part of the public
 20 technical knowledge in this country which description
 21 must include a disclosure of the principal characteristics
 22 by which the variety is distinguished.

23 (2) An application for protection of the variety
 24 based on the same breeder's acts, was filed in a foreign
 25 country by the owner or his privies more than one year

1 *before the effective filing date of the application filed in*
2 *the United States.*

3 *(3) Another is entitled to an earlier date of determina-*

4 *(3) Another is entitled to an earlier date of de-*
5 *termination for the same variety and such other (A)*
6 *has a certificate of plant variety protection hereunder*
7 *or (B) has been engaged in a continuing program of*
8 *development and testing to commercialization, or (C)*
9 *has within six months after such earlier date of deter-*
10 *mination adequately described the variety by a publica-*
11 *tion reasonably deemed a part of the public technical*
12 *knowledge in this country which description must in-*
13 *clude a disclosure of the principal characteristics by*
14 *which the variety is distinguished.*

15 *(b) The Secretary may, by regulation, extend for a*
16 *reasonable period of time the one year time period provided*
17 *in subsection (a) for filing applications, and may in that*
18 *event provide for at least commensurate reduction of the*
19 *term of protection.*

20 **Sec. 43. Reciprocity Limits.**

21 *Protection under the Act may, by regulation, be limited*
22 *to nationals of the United States, except where this limitation*
23 *would violate a treaty and except that nationals of a foreign*
24 *state in which they are domiciled shall be entitled to so much*
25 *of the protection here afforded as is afforded by said foreign*

1 state to nationals of the United States for the same genus
2 and species.

3 **Sec. 44. Public Interest In Wide Usage.**

4 The Secretary may declare a protected variety open to
5 use on a basis of equitable remuneration to the owner, not
6 less than a reasonable royalty, when he determines that such
7 declaration is necessary in order to insure an adequate sup-
8 ply of fiber, food, or feed in this country and that the owner
9 is unwilling or unable to supply the public needs for the
10 variety at a price which may reasonably be deemed fair.
11 Such declaration may be, with or without limitation, with or
12 without designation of what the remuneration is to be; and
13 shall be subject to review as under section 71 or 72 (any
14 finding that the price is not reasonable being reviewable), and
15 shall remain in effect not more than two years. In the event
16 litigation is required to collect such remuneration, a higher
17 rate may be allowed by the court.

18 **Chapter 5.—APPLICATIONS: FORM, WHO MAY FILE,**
19 **RELATING BACK, CONFIDENTIALITY**

20 **Sec. 51. Application for Recognition of Plant Variety**
21 **Rights.**

22 (a) An application for a certificate of Plant Variety
23 Protection may be filed by the owner of the variety sought to
24 be protected. The application shall be made in writing to the

1 *Secretary, shall be signed by or on behalf of the applicant,*
2 *and shall be accompanied by the prescribed fee.*

3 *(b) An error as to the naming of the breeder, without*
4 *deceptive intent, may be corrected at any time, in accordance*
5 *with regulation established by the Secretary.*

6 ***Sec. 52. Content of Application.***

7 *An application for a certificate recognizing plant variety*
8 *rights shall contain:*

9 *(1) The name of the variety except that a tempo-*
10 *rary designation will suffice until the certificate is to be*
11 *issued.*

12 *(2) A description of the variety setting forth its*
13 *novelty and a description of the genealogy and breeding*
14 *procedure, when known. The Secretary may require*
15 *amplification, including the submission of adequate pho-*
16 *tographs or drawings or plant specimens, if the descrip-*
17 *tion is not adequate or as complete as is reasonably pos-*
18 *sible, and submission of records or proof of ownership*
19 *or of allegations made in the application. An applicant*
20 *may add to or correct the description at any time, before*
21 *the certificate is issued, upon a showing acceptable to the*
22 *Secretary that the revised description is retroactively*
23 *accurate. Courts shall protect others from any injustice*
24 *which would result. The Secretary may accept records*

1 of the breeder and of any official seed certifying agency
2 in this country as evidence of stability where applicable.

3 (3) A declaration that a viable sample of basic seed
4 necessary for propagation of the variety will be deposited
5 and replenished periodically in a public repository in
6 accordance with regulations to be established hereunder.

7 This declaration may be added by amendment.

8 (4) A statement of the basis of applicant's owner-
9 ship.

10 **Sec. 53. Joint Breeders.**

11 (a) When two or more persons are the breeders, one
12 (or his successor) may apply, naming the others.

13 (b) The Secretary, after such notice as he may prescribe,
14 may issue a certificate of plant variety protection to the
15 applicant and such of the other breeders (or their successors
16 in interest) as may have subsequently joined in the
17 application.

18 **Sec. 54. Death or Incapacity of Breeder.**

19 Legal representatives of deceased breeders and of those
20 under legal incapacity may make application for plant vari-
21 ety protection upon compliance with the requirements and
22 on the same terms and conditions applicable to the breeder or
23 his successor in interest.

1 *Sec. 55. Benefit of Earlier Filing Date.*

2 *(a) An application for a certificate of plant variety*
3 *protection filed in this country based on the same variety,*
4 *and on rights derived from the same breeder, on which*
5 *there has previously been filed an application for plant*
6 *variety protection in a foreign country which affords similar*
7 *privileges in the case of applications filed in the United*
8 *States by citizens of the United States, shall have the same*
9 *effect as the same application would have if filed in the*
10 *United States on the date on which the application for plant*
11 *variety protection for the same variety was first filed in*
12 *such foreign country, if the application in this country is*
13 *filed within twelve months from the earliest date on which*
14 *such foreign application was filed. No application shall be*
15 *entitled to a right of priority under this section, unless the*
16 *applicant designates the foreign application in his appli-*
17 *cation or by amendment thereto and, if required by the*
18 *Secretary, furnishes such copy, translation or both, as the*
19 *Secretary may specify.*

20 *(b) An application for a certificate of plant variety pro-*
21 *tection for the same variety as was the subject of an applica-*
22 *tion previously filed in the United States by or on behalf of*
23 *the same person, or by his predecessor in title, shall have the*
24 *same effect as to such variety as though filed on the date of*

1 the prior application if filed before the issuance of the certifi-
2 cate or other termination of proceedings on the first appli-
3 cation or on an application similarly entitled to the benefit of
4 the filing date of the first application and if it contains or is
5 amended to contain a specific reference to the earlier filed
6 application.

7 (c) A later application shall not by itself establish that
8 a characteristic newly described was in the variety at the
9 time of the earlier application.

10 **Sec. 56. Confidential Status of Application.**

11 Applications for plant variety protection and their con-
12 tents shall be kept in confidence by the Plant Variety Pro-
13 tection Office, by the Board, and by the offices in the Depart-
14 ment of Agriculture to which access may be given under regu-
15 lations. No information concerning the same shall be given
16 without the authority of the owner, unless necessary under
17 special circumstances as may be determined by the Secretary,
18 except that the Secretary may publish the variety names
19 designated in applications, stating the kind to which each
20 applies.

21 **Sec. 57. Publication.**

22 The Secretary may establish regulations for the publica-
23 tion of any pending application when publication is requested
24 by the owner.

1 Chapter 6.—EXAMINATION, RESPONSE TIME, INITIAL
2 APPEALS

3 Sec. 61. *Examination of Application.*

4 The Secretary shall cause an examination to be made of
5 the application and if on such examination it is determined
6 that the applicant is entitled to plant variety protection under
7 the law, the Secretary shall issue a notice of allowance of plant
8 variety protection therefor as hereinafter provided.

9 Sec. 62. *Notice of Refusal; Reconsideration.*

10 (a) Whenever an application is refused, or any objection
11 or requirement made by the examiner, the Secretary shall
12 notify the applicant thereof, stating the reasons therefor, to-
13 gether with such information and references as may be useful
14 in judging the propriety of continuing the prosecution of the
15 application; and if after receiving such notice the applicant
16 requests reconsideration, with or without amendment, the ap-
17 plication shall be reconsidered.

18 (b) For taking appropriate action after the mailing
19 to him of an action other than allowance, an applicant shall
20 be allowed six months, or such other time as the Secretary
21 in exceptional circumstances shall set in the refusal, or such
22 time as he may allow as an extension. Without such exten-
23 sion, action may be taken up to three months late by paying
24 an additional fee to be prescribed by the Secretary.

1 *Sec. 63. Initial Appeal.*

2 *When an application for plant variety protection has*
 3 *been refused by the Plant Variety Protection Office, the ap-*
 4 *plicant may appeal to the Secretary. The Secretary shall*
 5 *seek the advice of the Plant Variety Protection Board on*
 6 *all appeals, before deciding the appeal.*

7 *Chapter 7.—APPEALS TO COURTS AND OTHER*
 8 *REVIEW*

9 *Sec. 71. Appeals.*

10 *From the decisions made under sections 44, 63, 91,*
 11 *92, and 128 appeal may, within sixty days or such further*
 12 *time as the Secretary allows, be taken under the Federal*
 13 *Rules of Appellate Procedure. The Court of Customs and*
 14 *Patent Appeals and United States Courts of Appeals shall*
 15 *have jurisdiction, with venue in the case of the latter as stated*
 16 *in 28 U.S.C. 2343.*

17 *Sec. 72. Civil Action Against Secretary.*

18 *An applicant dissatisfied with a decision under section 63*
 19 *or 91 of this title, may, as an alternative to appeal, have*
 20 *remedy by civil action against the Secretary in the United*
 21 *States District Court for the District of Columbia. Such*
 22 *action shall be commenced within sixty days after such deci-*
 23 *sion or within such further time as the Secretary allows. The*
 24 *court may, in the case of review of a decision by the Secre-*

1 tary refusing plant variety protection, adjudge that such
2 applicant is entitled to receive a certificate of plant variety
3 protection for his variety as specified in his application as the
4 facts of the case may appear, on compliance with the require-
5 ments of this Act.

6 **Sec. 73. Appeal or Civil Action in Contested Cases.**

7 (a) A party to a proceeding under section 92 of this
8 title, dissatisfied with the decision, may take an appeal under
9 section 71 or may have remedy by civil action if commenced
10 within sixty days after such decision or within such further
11 time as the Secretary allows. A party contemplating appeal
12 as provided herein shall notify all adverse parties of his in-
13 tention and any such adverse party, not the Secretary, shall
14 have the right, by notice served within ten days of the notice
15 to him, to elect that any review shall be by civil action. In
16 such suits the record in the Plant Variety Protection Office
17 shall be admitted on motion of any party upon the terms
18 and conditions as to costs, expenses, and the further cross-
19 examination of witnesses, as the court imposes, without prej-
20 udice to the right of the parties to take further testimony.
21 The testimony and exhibits of the record in the Plant Variety
22 Protection Office when admitted shall have the same effect as
23 if originally taken and produced in the suit.

24 (b) Such suit may be instituted against the party in
25 interest as shown by the record of the Plant Variety Protec-
26 tion Office at the time of the decision complained of, but any

1 party in interest may become a party to the action. If there
2 be adverse parties residing in a plurality of districts not em-
3 braced within the same State, or an adverse party residing
4 in a foreign country, the United States District Court for the
5 District of Columbia, or any United States district court to
6 which it may transfer the case, shall have jurisdiction and
7 may issue summons against the adverse parties directed to
8 the marshal of any district in which any adverse party
9 resides. Summons against adverse parties residing in foreign
10 countries may be served by publication or otherwise as the
11 court directs. The Secretary shall not be made a party but
12 he shall have the right to intervene. Judgment of the court
13 in favor of the right of an applicant to plant variety pro-
14 tection shall authorize the Secretary to issue a certificate of
15 plant variety protection on the filing in the Plant Variety
16 Protection Office of a certified copy of the judgment and on
17 compliance with the requirements of this Act.

18 **Chapter 8.—CERTIFICATES OF PLANT VARIETY**
19 **PROTECTION**

20 **Sec. 81. Plant Variety Protection.**

21 (a) If it appears that a certificate of plant variety pro-
22 tection should be issued on an application, a written notice of
23 allowance shall be given or mailed to the owner. The notice
24 shall specify the sum, constituting the issue fee, which shall be
25 paid within one month thereafter.

1 (b) Upon timely payment of this sum, and provided
2 that deposit of seed has been made in accordance with sec-
3 tion 52(3), the certificate of plant variety protection shall
4 issue.

5 (c) If any payment required by this section is not timely
6 made, but is submitted with an additional fee prescribed by
7 the Secretary within nine months after the due date or within
8 such further time as the Secretary may allow, it shall be
9 accepted.

10 **Sec. 82. How Issued.**

11 A certificate of plant variety protection shall be issued
12 in the name of the United States of America under the seal
13 of the Plant Variety Protection Office, and shall be signed
14 by the Secretary or have his signature placed thereon, and
15 shall be recorded in the Plant Variety Protection Office.

16 **Sec. 83. Contents and Term of Plant Variety Protection.**

17 (a) Every certificate of plant variety protection shall
18 certify that the breeder (or his successor in interest) his heirs
19 or assignees, has the right, during the term of the plant variety
20 protection, to exclude others from selling the variety, or offer-
21 ing it for sale, or reproducing it, or importing it, or exporting
22 it, or using it in producing (as distinguished from developing)
23 a hybrid or different variety therefrom, to the extent provided
24 by this Act. If the owner so elects, the certificate shall also

1 *specify that in the United States seed of the variety shall be*
2 *sold by variety name only as a class of certified seed and, if*
3 *specified, shall also conform to the number of generations des-*
4 *ignated by the owner. Any rights, or all rights except those*
5 *elected under the preceding sentence, may be waived; and*
6 *the certificate shall conform to such waiver. The Secretary*
7 *may at his discretion permit such election or waiver to be*
8 *made after certificating and amend the certificate accord-*
9 *ingly, without retroactive effect.*

10 *(b) The term of plant variety protection shall expire*
11 *seventeen years from the date of issue of the certificate in*
12 *the United States. If the certificate is not issued within*
13 *three years from the effective filing date, the Secretary may*
14 *shorten the term by the amount of delay in the prosecution*
15 *of the application attributed by the Secretary to the applicant.*

16 *(c) The term of plant variety protection shall also ex-*
17 *pire if the owner fails to comply with regulations, in force*
18 *at the time of certificating, relating to replenishing seed in*
19 *a public repository: Provided, however, That this expiration*
20 *shall not occur unless notice is mailed to the last owner*
21 *recorded as provided in section 101(d) and he fails, within*
22 *the time allowed thereafter, not less than three months, to*
23 *comply with said regulations, paying an additional fee to*
24 *be prescribed by the Secretary.*

1 *Sec. 84. Certificate of Correction of Plant Variety Protec-*
2 *tion Office Mistake.*

3 *Whenever a mistake in a certificate of plant variety*
4 *protection, incurred through the fault of the Plant Variety*
5 *Protection Office, is clearly disclosed by the records of the*
6 *Office, the Secretary may issue a certificate of correction*
7 *stating the fact and nature of such mistake, under seal,*
8 *without charge, to be recorded in the records of plant variety*
9 *protection. A copy thereof shall be attached to each copy of*
10 *the published specifications or certificate of plant variety*
11 *protection and such certificate of correction shall be considered*
12 *as part of the original certificate of plant variety protection.*
13 *Every such certificate of plant variety protection shall have*
14 *the same effect as if the same had been originally issued in*
15 *such corrected form. The Secretary may issue a corrected*
16 *certificate of plant variety protection without charge in lieu*
17 *of and with like effect as a certificate of correction.*

18 *Sec. 85. Certificate of Correction of Applicant's Mistake.*

19 *Whenever a mistake of a clerical or typographical na-*
20 *ture, or of minor character, or in the description of the*
21 *variety, which was not the fault of the Plant Variety Pro-*
22 *tection Office, appears in a certificate of plant variety pro-*
23 *tection and a showing has been made that such mistake oc-*
24 *curred in good faith, the Secretary may, upon payment of*
25 *the required fee, issue a certificate of correction in the manner*

1 and with attachment of copies as in section 84, if the correc-
 2 tion unquestionably could have been made before the certifi-
 3 cate issued. Such certificate of plant variety protection shall
 4 have the same effect and operation in law on the trial of ac-
 5 tions for causes thereafter arising as if the same had been
 6 originally issued in such corrected form.

7 **Sec. 86. Correction of Named Breeder.**

8 An error as to the naming of a breeder in the applica-
 9 tion, without deceptive intent, shall not affect validity of plant
 10 variety protection and may be corrected at any time by the
 11 Secretary in accordance with regulations established by him
 12 or upon order of a federal court before which the matter is
 13 called in question. Upon such correction the Secretary shall
 14 issue a certificate accordingly. Such correction shall not de-
 15 prive any person of any rights he otherwise would have had.

16 **Chapter 9.—REEXAMINATION AFTER ISSUE, AND**
 17 **CONTESTED PROCEEDINGS**

18 **Sec. 91. Reexamination After Issue.**

19 (a) Any person may, within five years after the issu-
 20 ance of a certificate of plant variety protection, notify the
 21 Secretary in writing of facts which may have a bearing on
 22 the protectability of the variety, and the Secretary may cause
 23 such plant variety protection to be reexamined in the light
 24 thereof.

25 (b) Reexamination of plant variety protection under

1 this section and appeals shall be pursuant to the same pro-
2 cedures and with the same rights as for original examina-
3 tions. Abandonment of the procedure while subject to a rul-
4 ing against the retention of the certificate shall result in can-
5 cellation of the plant variety certificate thereon and notice
6 thereof shall be endorsed on copies of the specification of the
7 protected plant variety thereafter distributed by the Plant
8 Variety Protection Office.

9 (c) If a person acting under subsection (a) makes a
10 prima facie showing of facts needing proof, the Secretary
11 may direct that the reexamination include such interparty
12 proceedings as he shall establish.

13 **Sec. 92. Priority Contest.**

14 (a) If the Secretary determines that two applications
15 of different applicants may be based on the same variety,
16 he may:

17 (1) Initiate a priority contest on his own motion
18 whether or not one of the applications may have been
19 certificated; or

20 (2) Issue a certificate on the application having the
21 earliest effective filing date, with notice to all; or

22 (3) Issue a certificate naming alternative owners,
23 under a single variety name acceptable to both.

24 (b) On request of any person when a certificate has
25 been issued naming another as an owner or alternative

1 owner, both having applied for protection on the same va-
2 riety, the Secretary shall institute a priority contest, except
3 that any person shall have forfeited his right to assert pri-
4 ority for the purpose of obtaining plant variety protection
5 when an adverse certificate has issued if he fails to make
6 the request within one year of the mailing of notice specified
7 in part (2) above or if he fails to make the request within
8 the period for taking action after refusal of his applica-
9 tion on the basis of the adverse certificate.

10 **Sec. 93. Effect of Adverse Final Judgment or of Non**
11 **Action.**

12 (a) A final judgment under section 92 adverse to an
13 application from which no appeal or other review had been
14 or can be taken or had shall constitute cancellation of any
15 certifying on that application, and notice thereof shall be
16 endorsed on copies of the specifications of the protected plant
17 variety thereafter distributed by the Plant Variety Protection
18 Office.

19 (b) Any person who has not proceeded in accordance
20 with the provision of this chapter shall not be foreclosed or
21 in any way prejudiced with respect to the defense of an
22 infringement suit or affirmative relief under declaratory judg-
23 ment proceedings.

24 (c) No person subject to an adverse decision in a pro-
25 ceeding under this chapter shall be foreclosed with respect to

1 asserting comparable grounds in defense of an infringement
 2 suit or as a basis for affirmative relief under declaratory judg-
 3 ment proceedings.

4 **Sec. 94. Interfering Plant Variety Protection.**

5 The owner of a certificate of plant variety protection
 6 may have relief against another owner of a certificate of
 7 the same variety by civil action, and the court may adjudge
 8 the question of validity of the respective certificates, or the
 9 ownership of the certificate. The provisions of section 73(b)
 10 of this title shall apply to actions brought under this section.

11 **TITLE III—PLANT VARIETY PROTECTION AND**
 12 **RIGHTS**

Chapter	Section
10. Ownership and Assignment.....	101
11. Infringement of Plant Variety Protection.....	111
12. Remedies for Infringement of Plant Variety Protection, and Other Actions	121
13. Intent and Severability.....	131
14. Temporary Provision and Related Enactments.....	141

13 **Chapter 10.—OWNERSHIP AND ASSIGNMENT**

14 **Sec. 101. Ownership and Assignment.**

15 (a) Subject to the provisions of this title, plant variety
 16 protection shall have the attributes of personal property.

17 (b) Applications for certificates of plant variety protec-
 18 tion, or any interest in a variety, shall be assignable by an
 19 instrument in writing. The owner may in like manner license
 20 or grant and convey an exclusive right to use of the variety
 21 in the whole or any specified part of the United States.

1 (c) A certificate of acknowledgment under the hand
2 and official seal of a person authorized to administer oaths
3 within the United States, or in a foreign country, of a diplo-
4 matic or consular officer of the United States or an officer
5 authorized to administer oaths whose authority is proved by
6 a certificate of a diplomatic or consular officer of the United
7 States, shall be prima facie evidence of the execution of an
8 assignment, grant, license, or conveyance of plant variety
9 protection or application for plant variety protection.

10 (d) An assignment, grant, conveyance or license shall
11 be void as against any subsequent purchaser or mortgagee for
12 a valuable consideration, without notice, unless it, or an
13 acknowledgement thereof by the person giving such encum-
14 brance that there is such encumbrance, is filed for recording in
15 the Plant Variety Protection Office within one month from its
16 date or at least one month prior to the date of such subsequent
17 purchase or mortgage.

18 **Sec. 102. Ownership During Testing.**

19 An owner who, with notice that release is for testing only,
20 releases possession of seed or other sexually reproducible plant
21 material for testing retains ownership with respect thereto;
22 and any diversion from authorized testing, or any unauthor-
23 ized retention, of such material by anyone who has knowledge
24 that it is under such notice, or who is chargeable with notice,
25 is prohibited, and violates the property rights of the owner.

1 *Anyone receiving the material tagged or labeled with the*
2 *notice is chargeable with the notice. The owner is entitled to*
3 *remedy and redress in a civil action hereunder. No remedy*
4 *available by State or local law is hereby excluded. No such*
5 *notice shall be used, or if used be effective, when the owner*
6 *has made identical sexually reproducible plant material avail-*
7 *able to the public, as by sale thereof.*

8 **Chapter 11.—INFRINGEMENT OF PLANT VARIETY**
9 **PROTECTION**

10 **Sec. 111. Infringement of Plant Variety Protection.**

11 *Except as otherwise provided in this title, it shall be an*
12 *infringement of the rights of the owner of a novel variety to*
13 *perform without authority, any of the following acts in the*
14 *United States, or in commerce which can be regulated by*
15 *Congress or affecting such commerce, prior to expiration of*
16 *the right to plant variety protection but after either the issue*
17 *of the certificate or the distribution of a novel plant variety*
18 *with the notice under section 127:*

19 (1) *sell the novel variety, or offer it or expose it for*
20 *sale, deliver it, ship it, consign it, exchange it, or solicit*
21 *an offer to buy it, or any other transfer of title or pos-*
22 *session of it;*

23 (2) *import the novel variety into, or export it from,*
24 *the United States;*

1 (3) sexually multiply the novel variety as a step in
2 marketing (for growing purposes) the variety; or

3 (4) use the novel variety in producing (as dis-
4 tinguished from developing) a hybrid or different va-
5 riety therefrom; or

6 (5) use seed which had been marked "propaga-
7 tion prohibited" or progeny thereof to propagate the
8 novel variety; or

9 (6) dispense the novel variety to another, in a
10 form which can be propagated, without notice as to
11 being a protected variety under which it was received;
12 or

13 (7) perform any of the foregoing acts even in in-
14 stances in which the novel variety is multiplied other
15 than sexually, except in pursuance of a valid United
16 States plant patent; or

17 (8) instigate or actively induce performance of any
18 of the foregoing acts.

19 **Sec. 112. Grandfather Clause.**

20 Nothing in this Act shall abridge the right of any person,
21 or his successor in interest, to reproduce or sell a variety
22 developed and produced by such person more than one year
23 prior to the effective filing date of an adverse application
24 for a certificate of plant variety protection.

1 **Sec. 113. Right To Save Seed. Crop Exemption.**

2 *Except to the extent that such action may constitute an*
3 *infringement under subsections (3) and (4) of section 111,*
4 *it shall not infringe any right hereunder for a person to save*
5 *seed produced by him from seed obtained, or descended from*
6 *seed obtained, by authority of the owner of the variety for*
7 *seeding purposes and use such saved seed in the production of*
8 *a crop for use on his farm, or for sale as provided in this*
9 *section: Provided, That without regard to the provisions of*
10 *section 111(3) it shall not infringe any right hereunder for*
11 *a person, whose primary farming occupation is the growing*
12 *of crops for sale for other than reproductive purposes, to sell*
13 *such saved seed to other persons so engaged, for reproductive*
14 *purposes, provided such sale is in compliance with such State*
15 *laws governing the sale of seed as may be applicable. A bona*
16 *fide sale for other than reproductive purposes, made in chan-*
17 *nels usual for such other purposes, of seed produced on a*
18 *farm either from seed obtained by authority of the owner for*
19 *seeding purposes or from seed produced by descent on such*
20 *farm from seed obtained by authority of the owner for seed-*
21 *ing purposes shall not constitute an infringement. A pur-*
22 *chaser who diverts seed from such channels to seeding pur-*
23 *poses shall be deemed to have notice under section 127 that*
24 *his actions constitute an infringement.*

1 **Sec. 114. Research Exemption.**

2 *The use and reproduction of a protected variety for plant*
 3 *breeding or other bona fide research shall not constitute an*
 4 *infringement of the protection provided under this Act.*

5 **Sec. 115. Intermediary Exemption.**

6 *Transportation or delivery by a carrier in the ordinary*
 7 *course of its business as a carrier, or advertising by a person*
 8 *in the advertising business in the ordinary course of that busi-*
 9 *ness, shall not constitute an infringement of the protection*
 10 *provided under this Act.*

11 **Chapter 12.—REMEDIES FOR INFRINGEMENT OF**
 12 **PLANT VARIETY PROTECTION, AND OTHER**
 13 **ACTIONS**

14 **Sec. 121. Remedy for Infringement of Plant Variety Pro-**
 15 **tection.**

16 *An owner shall have remedy by civil action for in-*
 17 *fringement of his plant variety protection under section 111.*
 18 *If a variety is sold under the name of a variety shown in*
 19 *a certificate, there is a prima facie presumption that it is*
 20 *the same variety.*

21 **Sec. 122. Presumption of Validity; Defenses.**

22 *(a) Certificates of plant variety protection shall be pre-*
 23 *sumed valid. The burden of establishing invalidity of a plant*
 24 *variety protection shall rest on the party asserting invalidity.*

1 (b) *The following shall be defenses in any action charg-*
2 *ing infringement and shall be pleaded: (1) noninfringement,*
3 *absence of liability for infringement, or unenforceability; (2)*
4 *invalidity of the plant variety protection in suit on any*
5 *ground specified in section 42 of this title as a condition for*
6 *protectability; (3) invalidity of the plant variety protection*
7 *in suit for failure to comply with any requirement of section*
8 *52; (4) that the asserted infringement was performed un-*
9 *der an existing certificate adverse to that asserted and prior*
10 *to notice of the infringement; and (5) any other fact or*
11 *act made a defense by this Act.*

12 ***Sec. 123. Injunction.***

13 *The several courts having jurisdiction of cases under this*
14 *title may grant injunctions in accordance with the principles*
15 *of equity to prevent the violation of any right hereunder on*
16 *such terms as the court deems reasonable.*

17 ***Sec. 124. Damages.***

18 (a) *Upon finding an infringement the court shall award*
19 *damages adequate to compensate for the infringement but in*
20 *no event less than a reasonable royalty for the use made*
21 *of the variety by the infringer, together with interest and*
22 *costs as fixed by the court.*

23 (b) *When the damages are not determined by the jury,*
24 *the court shall determine them. In either event the court may*

1 increase the damages up to three times the amount deter-
2 mined.

3 (c) The court may receive expert testimony as an aid
4 to the determination of damages or of what royalty would
5 be reasonable under the circumstances.

6 (d) As to infringement prior to, or resulting from a
7 planting prior to, issuance of a certificate for the infringed
8 variety, a court finding the infringer to have established
9 innocent intentions, shall have discretion as to awarding
10 damages.

11 **Sec. 125. Attorney Fees.**

12 The court in exceptional cases may award reasonable
13 attorney fees to the prevailing party.

14 **Sec. 126. Time Limitation on Damages.**

15 (a) No recovery shall be had for that part of any in-
16 fringement committed more than six years (or known to
17 the owner more than one year) prior to the filing of the
18 complaint or counterclaim for infringement in the action.

19 (b) In the case of claims against the United States
20 Government for unauthorized use of a protected variety, the
21 period between the date of receipt of written claim for com-
22 pensation by the department or agency of the Government
23 having authority to settle such claim, and the date of mail-
24 ing by the Government of a notice to the claimant that his

1 claim has been denied shall not be counted as part of the
2 period referred to in the preceding paragraph.

3 **Sec. 127. Limitation of Damages; Marking and Notice.**

4 Owners may give notice to the public by physically
5 associating with or affixing to the container of seed of a novel
6 variety or by fixing to the novel variety, a label containing the
7 words "Propagation Prohibited" and after the certificate
8 issues, such additional words as "U.S. Protected Variety".
9 In the event the novel variety is distributed by authorization
10 of the owner and is received by the infringer without such
11 marking, no damages shall be recovered against such in-
12 fringer by the owner in any action for infringement, unless
13 the infringer has actual notice or knowledge that propaga-
14 tion is prohibited or that the variety is a protected variety, in
15 which event damages may be recovered only for infringe-
16 ment occurring after such notice. As to both damages and in-
17 junction, a court shall have discretion to be lenient as to dis-
18 posal of materials acquired in good faith by acts prior to such
19 notice.

20 **Sec. 128. False Marking; Cease and Desist Orders.**

21 (a) Each of the following acts, if performed in connec-
22 tion with the sale, offering for sale, or advertising of sexually
23 reproducible plant material, is prohibited, and the Secretary
24 may, if he determines after an opportunity for hearing that
25 the act is being so performed, issue an order to cease and

1 *desist, said order being binding unless appealed under*
2 *section 71:*

3 (1) *Use of the words "U.S. Protected Variety"*
4 *or any word or number importing that the material is*
5 *a variety protected under certificate, when it is not.*

6 (2) *Use of any wording importing that the ma-*
7 *terial is a variety for which an application for plant*
8 *variety protection is pending, when it is not.*

9 (3) *Use of the phrase "propagation prohibited" or*
10 *similar phrase without reasonable basis, a statement of*
11 *this basis being promptly filed with the Secretary if the*
12 *phrase is used beyond testing and no application has been*
13 *filed. Any reasonable basis expires one year after the first*
14 *sale of the variety except as justified thereafter by a pend-*
15 *ing application or a certificate still in force.*

16 (b) *Anyone convicted of violating a binding cease and*
17 *desist order, or of performing any act prohibited in sub-*
18 *section (a) of this section for the purpose of deceiving the*
19 *public, shall be fined not more than \$10,000 and not less*
20 *than \$500.*

21 (c) *Anyone whose business is damaged or is likely to*
22 *be damaged by an act prohibited in subsection (a) of this*
23 *section, or is subjected to competition in connection with*
24 *which such act is performed, may have remedy by civil*
25 *action.*

1 **Sec. 129. Nonresident Proprietors; Service and Notice.**

2 *Every owner not residing in the United States may file*
3 *in the Plant Variety Protection Office a written designation*
4 *stating the name and address of a person residing within*
5 *the United States on whom may be served process or*
6 *notice of proceedings affecting the plant variety protection*
7 *or rights thereunder. If the person designated cannot be found*
8 *at the address given in the last designation, or if no person*
9 *has been designated, the United States District Court for*
10 *the District of Columbia shall have jurisdiction and sum-*
11 *mons shall be served by publication or otherwise as the court*
12 *directs. The court shall have the same jurisdiction to take*
13 *any action respecting the plant variety protection, or rights*
14 *thereunder that it would have if the owner were personally*
15 *within the jurisdiction of the court.*

16 **Chapter 13.—INTENT AND SEVERABILITY**

17 **Sec. 131. Intent.**

18 *It is the intent of Congress to provide the indicated*
19 *protection for new varieties by exercise of any constitutional*
20 *power needed for that end, so as to afford adequate encour-*
21 *agement for research, and for marketing when appropriate,*
22 *to yield for the public the benefits of new varieties. Consti-*
23 *tutional clauses 3 and 8 of article I, section 8 are both relied*
24 *upon.*

1 *Sec. 132. Severability.*

2 *If this Act is held unconstitutional as to some provisions*
 3 *or circumstances, it shall remain in force as to the remainder*
 4 *and other circumstances.*

5 **Chapter 14.—TEMPORARY PROVISION AND RELATED**
 6 **ENACTMENTS; MISCELLANEOUS**

7 *Sec. 141. Effective Date.*

8 *This Act shall take effect upon enactment. Applications*
 9 *may be filed with the Secretary and held by him until the*
 10 *Office of Plant Variety Protection is organized and in oper-*
 11 *ation.*

12 *Sec. 142. Amendment of Federal Seed Act.*

13 *The Federal Seed Act (53 Stat. 1275) is amended as*
 14 *follows:*

15 *(a) By adding at the end thereof:*

16 **“TITLE V—SALE OF UNCERTIFIED SEED OF**
 17 **PROTECTED VARIETY**

18 **“Section 501.**

19 *“(a) It shall be unlawful in the United States or in in-*
 20 *terstate or foreign commerce to sell by variety name seed not*
 21 *certified by an official seed certifying agency when it is a*
 22 *variety for which a certificate of plant variety protection*
 23 *under the Plant Variety Protection Act specifies sale only*
 24 *as a class of certified seed: Provided, That seed from a certi-*

1 *fied lot may be labeled as to variety name when used in a mix-*
 2 *ture by, or with the approval of, the owner of the variety."*

3 (b) *By adding at the end of section 102 the following*
 4 *wording: "Seed of a variety for which a certificate of plant*
 5 *variety protection under the Plant Variety Protection Act*
 6 *specifies sale only as a class of certified seed shall be certified*
 7 *only when*

8 " (1) *the basic seed from which the variety was pro-*
 9 *duced was furnished by authority of the owner of the*
 10 *variety if the certification is made during the term of*
 11 *protection, and*

12 " (2) *it conforms to the number of generations desig-*
 13 *nated by the certificate, if the certificate contains such a*
 14 *designation."*

15 ***Sec. 143. Amendment of Judicial Code.***

16 *Title 28 of the United States Code, entitled Judicial*
 17 *Code and Judiciary, is amended as follows:*

18 (a) *After section 1544 add:*

19 ***"Sec. 1545. Decision of the Plant Variety Protection Office.***

20 *"The Court of Customs and Patent Appeals shall have*
 21 *nonexclusive jurisdiction of appeals under section 71 of*
 22 *the Plant Variety Protection Act."*

23 (b) *In section 1338 after "Patents" in the heading,*
 24 *after "patents" and after "patent" (both occurrences) insert*
 25 *", plant variety protection".*

1 (c) *After section 2351 add:*

*2353. The Court of appeals has nonexclusive jurisdiction to hear appeals
under section 71 of the Plant Variety Protection Act.*

2 *Sec. 144. Short Title.*

3 *This Act may be cited as the “Plant Variety Protection*
4 *Act.”.*

91ST CONGRESS
2D SESSION

S. 3070

[Report No. 91-1138]

A BILL

To encourage the development of novel varieties of sexually reproduced plants to make them available to the public, providing protection available to those who breed, develop, or discover them, and thereby promoting progress in agriculture in the public interest.

By Mr. MULLER, Mr. DOLE, Mr. EASTLAND, Mr. HOLLINGS, Mr. JORDAN of North Carolina, and Mr. YOUNG of North Dakota

OCTOBER 23, 1969

Read twice and referred to the Committee on Agriculture and Forestry

AUGUST 21 (legislative day, AUGUST 20), 1970

Reported with an amendment

DIGEST of Congressional Proceedings

OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

OFFICE OF BUDGET AND FINANCE
(FOR INFORMATION ONLY;
NOT TO BE QUOTED OR CITED)

For actions of September 29, 1970
91st-2nd; No. 170

CONTENTS

Agencies.....	12	Forest resources.....	10	Nutrition.....	9
Animals.....	13	Highways.....	15	Paid advertising.....	1
Appropriations.....	17	Highway Trust Fund.....	2	Pesticides.....	11
Bills reported.....	1	Housing.....	2	Potato research.....	1
Budget.....	7	Imported commodities.....	1	Property.....	14
CEQ.....	12	Lands.....	8,22	Public employees.....	16
Committee action.....	2	Margarine.....	1	Reorganization Plan #3...	5
Contracts.....	22	Marketing orders.....	1	Restrictions.....	1
Disaster relief.....	1	Motor vehicles.....	18	Rural development.....	6
Economic Poisons.....	1	National Lakeshore.....	19	Solid wastes.....	2
EPA.....	5,12	National parks.....	21	Storage property.....	20
FHA loans.....	1	NOAA.....	12	Trade bill.....	3
Foreign trade.....	3	Novel plant varieties....	4	Urban development.....	2
				Wheat.....	23

HIGHLIGHTS: House Committees reported bills permitting paid advertising under marketing orders, providing for potato research and promotion program, and extending restrictions on imported commodities; expanding disaster relief programs; regarding margarine served in public places; and rules for bills increasing certain FHA loan limitations and prohibiting importation of certain agricultural commodities to which economic poisons have been applied.

Rep. Mahon inserted highlights of latest "budget scorekeeping" report.
Senate Committee reported plant variety protection bill.

HOUSE

1. BILLS REPORTED.

Committee on Agriculture reported with amendment H.R. 18884, to permit projects for paid advertising under marketing orders, to provide for a potato research and promotion program, and to provide for the extension of restrictions on imported commodities (H. Rept. 91-1480) (filed Sept. 28); and

Committee on Public Works reported with amendment S. 3619, to revise and expand Federal programs for disaster relief (H. Rept. 91-1524); and

Committee on Interstate and Foreign Commerce reported with amendment, H.R. 12061, regarding the identification of margarine served in public places (H. Rept. 91-1526); and

Committee on Rules reported the following:

H. Res. 1228, an open rule providing for the consideration of, and 1 hour of debate on, H.R. 11547, to increase the loan limitation on certain FHA loans; and

H. Res. 1229, an open rule providing for the consideration of, and 1 hour of debate on, H.R. 15560, to prohibit the importation of certain agricultural commodities to which economic poisons have been applied.
pp. H9426-7

2. COMMITTEE ACTION.

Committee on Banking and Currency voted to report (but did not actually report) H.R. 19436, the proposed Housing and Urban Development Act of 1970.
p. D1074

Committee on Ways and Means approved a 5-year extension of the Highway Trust Fund. p. D1076

Conferees agreed to file a report on H.R. 11833, providing financial assistance for the construction of solid waste disposal facilities. p. D1076

3. FOREIGN TRADE. Rep. Gibbons spoke in favor of an open rule for debate on the trade bill and included several editorials expressing opposition to the bill in its present form. pp. H9382-6

Rep. Dent also expressed support of an open rule for the consideration of the trade bill and inserted a history of the trade and tariff actions of the Congresses of the U.S. since 1776. pp. H9386-8

SENATE

4. NOVEL PLANT VARIETIES. Judiciary Committee reported with amendments S. 3070, to encourage the development of novel varieties of plants (S. Rept. 91-1246)
p. S16679

5. REORGANIZATION PLAN NO. 3. Committee on Government Operations issued special report recommending that Reorganization Plan No. 3, providing for the establishment of the Environmental Protection Agency become effective (S. Rept. 91-1250).
p. S16679

PLANT VARIETY PROTECTION ACT

SEPTEMBER 29, 1970.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary,
submitted the following

REPORT

[To accompany S. 3070]

The Committee on the Judiciary, to which was referred the bill (S. 3070) to encourage the development of novel varieties of sexually reproduced plants and to make them available to the public, providing protection available to those who breed, develop, or discover them, and thereby promoting progress in agriculture in the public interest, having considered the same, reports favorably thereon, with amendments, and recommends that the bill as amended do pass.

AMENDMENTS

- (1) On page 53, line 16, strike out "or" and insert in lieu thereof "of".
- (2) On page 55, line 18, strike out "carrot,".
- (3) On page 58, line 3, strike out "(3) Another is entitled to an earlier date of determina-".
- (4) On page 60, line 5, strike out "regulation" and insert in lieu thereof "regulations".
- (5) On page 62, line 8, strike out "citizens" and insert in lieu thereof "nationals".
- (6) On page 74, between lines 12 and 13, insert "; Exempted Plants; Miscellaneous" immediately after "14. Temporary Provision and Related Enactments".

(7) On page 85, line 3, strike out "remainder" and insert in lieu thereof "remaining provisions".

(8) On page 85, line 6, immediately after the semicolon, insert "EXEMPTED PLANTS;".

(9) On page 87, between lines 1 and 2, insert the following new section:

"SEC. 144. Exempted plants.

The provisions of this Act shall not apply to the seeds, plants, or transplants of okra, celery, peppers, tomatoes, carrots, and cucumbers.

(10) On page 87, line 2, strike out "SEC. 144" and insert in lieu thereof "SEC. 145".

PURPOSE OF AMENDMENTS

The committee has made several clarifying amendments to the bill and one substantive amendment which provides that celery, okra, peppers, tomatoes, carrots, and cucumbers will be exempted from the provisions of the bill. The fruit and vegetable industry of the United States represents a large and complex segment of our agriculture and a very important segment of the Nation's economy. This bill is vitally important to that industry.

One significant segment of the industry, which is engaged in the processing of vegetables, conducts its own research and development programs aimed at developing new varieties which best fit its requirements. In order to utilize the benefits of mass production techniques, it is essential that this segment of the industry have high quality varieties which are ideally suited to the soils and climate in different production areas and which are also susceptible to rapid mechanical harvesting. This segment of the industry is not engaged in research designed to develop new varieties for sale in commercial seed channels. Since they do not produce new varieties for sale as such and their business is not related thereto, no useful purpose would be gained by having the provisions of this bill apply to them. Therefore, the committee recommends this amendment.

PURPOSE

This bill as amended provides for the issuance of "certificates of plant variety protection" assuring the developers of novel varieties of sexually reproduced plants of exclusive rights to sell, reproduce, import, or export such varieties, or use them in the production (as distinguished from the development) of hybrids or different varieties, for a period of 17 years. A Plant Variety Protection Office would be established in the Department of Agriculture to administer the law. Similar protection is now provided for sexually reproduced varieties through patents issued by the Patent Office.

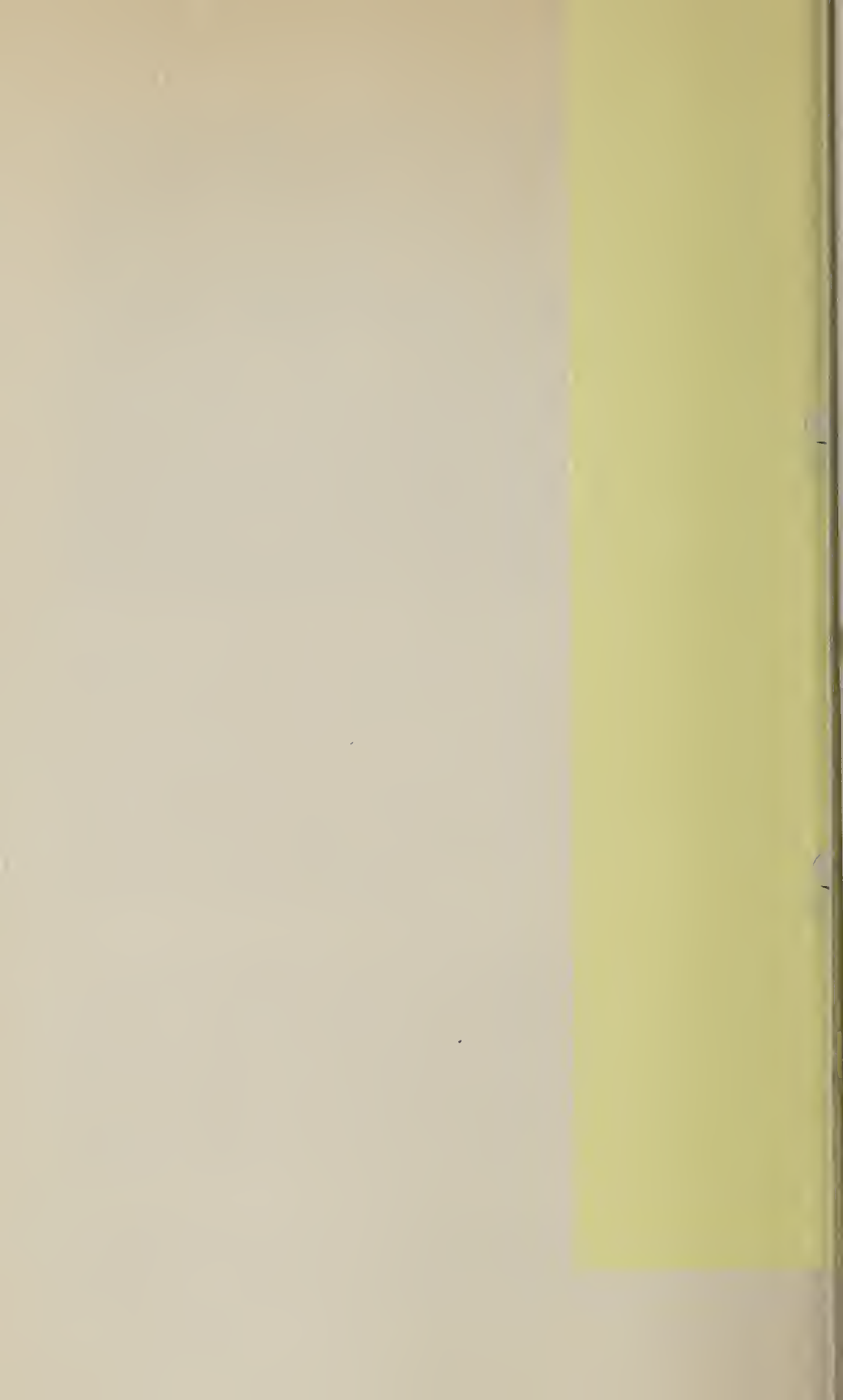
STATEMENT

During the hearings by this committee's Subcommittee on Patents, Trademarks, and Copyrights on the legislation providing for a general revision of the patent laws, consideration was given to an amendment

of the plant patent section of the patent law. Under the patent law, patent protection is limited to those varieties of plants which reproduce asexually, that is, by such methods as grafting or budding. No protection is available to those varieties of plants which reproduce sexually, that is, generally by seeds. Thus, patent protection is not available with respect to new varieties of most of the economically important agricultural crops, such as cotton or soybeans. The Patent Subcommittee conducted hearings on February 1, 1968, on an amendment to broaden the scope of plant patent protection so as to apply to sexually reproduced plants. A number of objections to this proposal were advanced during the hearings, and no further action in that area has been taken by the subcommittee.

Subsequently, legislation was introduced to encourage the development of novel varieties of sexually reproduced plants by the issuance of certificates of plant variety protection by the Department of Agriculture. S. 3070, to establish such protection, was reported by the Committee on Agriculture and Forestry, and on August 24 this legislation was referred to this committee for the purpose of reviewing its impact on the plant patent statute. The committee accordingly has examined S. 3070 and finds that it does not alter protection currently available within the patent system. The committee recommends the bill, S. 3070, favorably as amended.

○



Calendar No. 1265

91ST CONGRESS
2^D SESSION

S. 3070

[Report No. 91-1138]

[Report No. 91-1246]

IN THE SENATE OF THE UNITED STATES

OCTOBER 23, 1969

Mr. MILLER (for himself, Mr. DOLE, Mr. EASTLAND, Mr. HOLLINGS, Mr. JORDAN of North Carolina, and Mr. YOUNG of North Dakota) introduced the following bill; which was read twice and referred to the Committee on Agriculture and Forestry

AUGUST 21 (legislative day, AUGUST 20), 1970

Reported by Mr. JORDAN of North Carolina, with an amendment

AUGUST 24, 1970

Referred to the Committee on the Judiciary

SEPTEMBER 29, 1970

Reported by Mr. EASTLAND, with amendments

[Strike out all after the enacting clause and insert the part printed in italic, amendments made by Committee on the Judiciary are shown in linetype italic and roman bold]

A BILL

To encourage the development of novel varieties of sexually reproduced plants and to make them available to the public, providing protection available to those who breed, develop, or discover them, and thereby promoting progress in agriculture in the public interest.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

INDEX

	Section
TITLE I Plant Variety Protection Office	1
TITLE II Protectability of Plant Varieties and Certificates of Protection	41
TITLE III Plant Variety Protection and Rights	101

~~TITLE I PLANT VARIETY PROTECTION~~

~~OFFICE~~

Chapter	Section
1. Organization and Publications	1
2. Legal Provisions as to the Plant Variety Protection Office	21
3. Plant Variety Protection Fees	31

~~Chapter 1. ORGANIZATION AND PUBLICATIONS~~

~~Section 1. Establishment.~~

~~There is hereby established in the Department of Agriculture a bureau to be known as the Plant Variety Protection Office, which shall have the functions set forth in this Act.~~

~~Sec. 2. Seal.~~

~~The Plant Variety Protection Office shall have a seal with which documents and certificates evidencing plant variety protection shall be authenticated.~~

~~Sec. 3. Officers and Employees.~~

~~(a) There shall be in the Plant Variety Protection Office a Commissioner of Plant Variety Protection, one Assistant Commissioner, and an appropriate staff. The Assistant Commissioner shall perform the duties pertaining to the office of Commissioner assigned to him by the Commissioner and shall fill the office of Commissioner during a vacancy in that office or in the absence of the Commissioner. The Com-~~

1 ~~missioner of Plant Variety Protection shall be appointed by~~
2 ~~the Secretary.~~

3 ~~(b) The Secretary is authorized to fix the per annum~~
4 ~~rate of basic compensation of each staff member in the Plant~~
5 ~~Variety Protection Office at not in excess of the maximum~~
6 ~~scheduled rate provided for positions in level V of section~~
7 ~~5316 of title 5, United States Code.~~

8 ~~**Sec. 4. Restrictions on Employees as to Interest in Plant**~~
9 ~~**Variety Protection.**~~

10 ~~Employees of the Plant Variety Protection Office, in-~~
11 ~~cluding the Commissioner and Assistant Commissioner, shall~~
12 ~~be ineligible during the periods of their employment, to apply~~
13 ~~for plant variety protection and to acquire directly or in-~~
14 ~~directly, except by inheritance or bequest, any right or~~
15 ~~interest in any matters before that office. This section shall~~
16 ~~not apply to members of the Plant Variety Protection Board~~
17 ~~who are not otherwise employees of the Plant Variety~~
18 ~~Protection Office.~~

19 ~~**Sec. 5. Bond of Commissioner and Employees.**~~

20 ~~The Commissioner and such other employees as he des-~~
21 ~~ignates, before entering upon their duties, shall severally give~~
22 ~~bond, with sureties, the former in the sum of \$10,000, and~~
23 ~~the latter in sums prescribed by the Commissioner, condi-~~
24 ~~tioned for the faithful discharge of their respective duties and~~
25 ~~that they shall render to the proper officers of the Treasury~~

~~1 a true account of all money received by virtue of their
2 offices.~~

~~3 Sec. 6. Duties of Commissioner, Regulations.~~

~~4 The Commissioner, who shall report directly to the Sec-
5 retary, shall superintend or perform all duties required here-
6 under, and he shall have charge of property belonging to
7 the Plant Variety Protection Office. He may establish regula-
8 tions, not inconsistent with law, for the conduct of proceed-
9 ings in the Plant Variety Protection Office after consultations
10 with the Plant Variety Protection Board. All regulations
11 issued pursuant to this title shall be subject to the approval of
12 the Secretary.~~

~~13 Sec. 7. Plant Variety Protection Board.~~

~~14 (a) APPOINTMENT.—The Secretary shall appoint a
15 Plant Variety Protection Board. The Board shall consist
16 of individuals who, as a group, are expert in various areas of
17 varietal development covered by this Act. Membership of
18 the Board shall be drawn approximately equally from the
19 private or seed industry sector and from the sector of govern-
20 ment or the public. The Commissioner or his designee shall
21 act as chairman of the Board without voting rights except
22 in the case of ties.~~

~~23 (b) FUNCTIONS OF BOARD.—The functions of the Plant
24 Variety Protection Board shall include:~~

~~25 (1) Advising the Commissioner concerning the~~

~~adoption of Rules and Regulations to facilitate the proper administration of this Act;~~

~~(2) Making advisory decisions on all appeals from the Examiner. The Board shall determine whether to act as a full Board or by panels it selects; and whether to review advisory decisions made by a panel. For service on such appeals, the Board may select, as temporary members, experts in the area to which the particular appeal relates; and~~

~~(3) Advising the Secretary on all questions under section 44.~~

~~(c) COMPENSATION OF BOARD.—The members of the Plant Variety Protection Board shall serve without compensation except for standard government reimbursable expenses.~~

~~Sec. 8. Library.~~

~~The Commissioner shall maintain a library of scientific and other works and periodicals, both foreign and domestic, in the Plant Variety Protection Office to aid the officers in the discharge of their duties.~~

~~Sec. 9. Register of Protected Plant Varieties.~~

~~The Commissioner shall maintain a register of published specifications of United States protected plant varieties and a file of such other scientific and technical information as may be necessary or practicable.~~

1 ~~Sec. 10. Publications.~~

2 ~~(a) The Commissioner may publish, or cause to be pub-~~
3 ~~lished, in such format as he shall determine to be suitable, the~~
4 ~~following:~~

5 ~~(1) The specifications for plant variety protection~~
6 ~~including drawings and photographs.~~

7 ~~(2) The Official Journal of the Plant Variety Pro-~~
8 ~~tection Office, including annual indices.~~

9 ~~(3) Pamphlet copies of the plant variety protection~~
10 ~~laws and rules of practice and circulars or other publica-~~
11 ~~tions relating to the business of the Office.~~

12 ~~(b) The Plant Variety Protection Office may print the~~
13 ~~heading of the drawings or photographs for protected plant~~
14 ~~varieties for the purpose of photolithography and any lithog-~~
15 ~~raphy to appear on the same page.~~

16 ~~(c) The Commissioner may (1) establish public facili-~~
17 ~~ties for the searching of plant variety protection records and~~
18 ~~materials, and (2) from time to time, as through an informa-~~
19 ~~tion service, disseminate to the public those portions of the~~
20 ~~technological and other public information available to or~~
21 ~~within the Plant Variety Protection Office to encourage inno-~~
22 ~~vation and promote the progress of the useful arts.~~

23 ~~(d) The Commissioner may exchange any of the pub-~~
24 ~~lications specified for publications desirable for the use of the~~

~~1 Plant Variety Protection Office. The Commissioner may~~
~~2 exchange copies of specifications, drawings, and photographs~~
~~3 of United States protected plant varieties for copies of speci-~~
~~4 fications, drawings, and photographs of applications and pro-~~
~~5 tected plant varieties of foreign countries.~~

~~6 Sec. 11. Copies for Public Libraries.~~

~~7 The Commissioner may supply printed copies of speci-~~
~~8 fications, drawings, and photographs of protected plant varie-~~
~~9 ties to public libraries in the United States which shall main-~~
~~10 tain such copies for the use of the public.~~

~~11 Chapter 2. LEGAL PROVISIONS AS TO THE PLANT~~
~~12 VARIETY PROTECTION OFFICE~~

~~13 Sec. 21. Day for Taking Action Falling on Saturday, Sun-~~
~~14 day, or Holiday.~~

~~15 When the day, or the last day, for taking any action or~~
~~16 paying any fee in the United States Plant Variety Protection~~
~~17 Office falls on Saturday, Sunday, a holiday within the District~~
~~18 of Columbia, or on any other day the Plant Variety Protec-~~
~~19 tion Office is closed for the receipt of papers, the action may~~
~~20 be taken or the fee paid, on the next succeeding business day.~~

~~21 Sec. 22. Form of Papers Filed.~~

~~22 The Commissioner may by regulations prescribe the form~~
~~23 of papers to be filed in the Plant Variety Protection Office.~~

1 ~~Sec. 23. Testimony in Plant Variety Protection Office~~
2 ~~Cases.~~

3 ~~The Commissioner may establish regulations for taking~~
4 ~~affidavits, depositions, and other evidence required in cases~~
5 ~~before the Plant Variety Protection Office. Any officer author-~~
6 ~~ized by law to take depositions to be used in the courts of the~~
7 ~~United States, or of the State where he resides, may take such~~
8 ~~affidavits and depositions, and swear the witnesses. If any~~
9 ~~person acts as a hearing officer by authority of the Commis-~~
10 ~~sioner, he shall have like power.~~

11 ~~Sec. 24. Subpoenas, Witnesses.~~

12 ~~(a) The clerk of any United States court for the district~~
13 ~~wherein testimony is to be taken in accordance with regula-~~
14 ~~tions established by the Commissioner for use in any con-~~
15 ~~tested case in the Plant Variety Protection Office shall, upon~~
16 ~~the application of any party thereof, issue a subpoena for any~~
17 ~~witness residing or being within such district or within one~~
18 ~~hundred miles of the stated place in such district, command-~~
19 ~~ing him to appear and testify before an officer in such~~
20 ~~district authorized to take depositions and affidavits, at the~~
21 ~~time and place stated in the subpoena. The provisions of the~~
22 ~~Federal Rules of Civil Procedure relating to the attendance~~
23 ~~of witnesses and the production of documents and things shall~~
24 ~~apply to contested cases in the Plant Variety Protection~~
25 ~~Office insofar as consistent with such regulations.~~

1 ~~(b) Every witness subpoenaed or in attendance shall be~~
2 ~~allowed the fees and traveling expenses allowed to witnesses~~
3 ~~attending the United States district courts.~~

4 ~~(c) A judge of a court whose clerk issued a subpoena~~
5 ~~may enforce obedience to the process or punish disobedience~~
6 ~~as in other like cases, on proof that a witness, served with~~
7 ~~such subpoena, neglected or refused to appear or to testify.~~
8 ~~No witness shall be deemed guilty of contempt for disobeying~~
9 ~~such subpoena unless his fees and traveling expenses in going~~
10 ~~to, and returning from, one day's attendance at the place~~
11 ~~of examination, are paid or tendered him at the time of the~~
12 ~~service of the subpoena; nor for refusing to disclose any~~
13 ~~secret matter except upon appropriate order of the court~~
14 ~~which issued the subpoena.~~

15 ~~**Sec. 25. Effect of Defective Execution.**~~

16 ~~Any document to be filed in the Plant Variety Protec-~~
17 ~~tion Office and which is required by any law or regulation to~~
18 ~~be executed in a specified manner may be provisionally ac-~~
19 ~~cepted by the Commissioner despite a defective execution,~~
20 ~~provided a properly executed document is submitted within~~
21 ~~such time as may be prescribed.~~

22 ~~**Sec. 26. Regulations for Practice Before the Office.**~~

23 ~~The Commissioner, subject to the approval of the Secre-~~
24 ~~tary, may prescribe regulations governing the recognition~~

1 ~~and conduct of persons representing applicants or other parties~~
2 ~~before the Plant Variety Protection Office. The Commissioner~~
3 ~~may, after notice and opportunity for a hearing~~
4 ~~suspend or exclude, either generally or in any particular~~
5 ~~case, from further practice before the Office of Plant Variety~~
6 ~~Protection any person shown to be incompetent or disreputable~~
7 ~~or guilty of gross misconduct.~~

8 **~~Sec. 27. Unauthorized Practice.~~**

9 ~~Anyone who engages in direct or indirect practice before~~
10 ~~the Office of Plant Variety Protection while suspended or~~
11 ~~excluded under section 26, or without being either authorized~~
12 ~~to practice law where he maintains his office, or authorized~~
13 ~~by the Commissioner on the basis of having established his~~
14 ~~ability and character, shall be liable in a civil action for the~~
15 ~~return of all money received, and for compensation for~~
16 ~~damage done by such person and also may be enjoined from~~
17 ~~such practice. However there shall be no liability for damage~~
18 ~~if such person establishes that the work was done competently~~
19 ~~and without negligence. This section does not apply to any-~~
20 ~~one who, without a claim of self-sufficiency, works under~~
21 ~~the supervision of another, who is thus authorized and is~~
22 ~~the responsibility party; nor to anyone who establishes that~~
23 ~~he acted only on behalf of any employer by whom he was~~
24 ~~regularly employed.~~

1 ~~Chapter 3. PLANT VARIETY PROTECTION FEES~~

2 ~~Sec. 31. Plant Variety Protection Fees.~~

3 ~~(a) The Commissioner shall charge the following fees:~~

4 ~~(1) On filing each application for a certificate of~~
5 ~~plant variety protection, \$50.~~

6 ~~(2) For issuing each certificate of plant variety~~
7 ~~protection, \$50 unless the drawing or photograph to be~~
8 ~~reproduced is in color and in that event, \$75.~~

9 ~~(3) On appeal under section 63 of this title, for~~
10 ~~the first time from the examiner to the Plant Variety~~
11 ~~Protection Board, \$50. In addition, when consideration~~
12 ~~by the Plant Variety Protection Board is reached, \$50.~~

13 ~~(4) For certificate under section 85 or under sec-~~
14 ~~tion 86 of this title, \$15.~~

15 ~~(5) As available: For uncertified copies of specifi-~~
16 ~~cation, drawing, and photographs which have been pub-~~
17 ~~lished, such fees and charges as the Commissioner may~~
18 ~~establish.~~

19 ~~(6) For recording every assignment, agreement,~~
20 ~~or other paper relating to the property in a plant variety~~
21 ~~protection application, \$10: where the document re-~~
22 ~~lates to more than one plant variety protection applica-~~
23 ~~tion, \$1 for each additional item.~~

1 ~~(7) For each certificate certifying copies of records,~~
2 ~~\$1.~~

3 ~~(8) For delayed payment or other action when~~
4 ~~permitted upon payment of special fee, \$10.~~

5 ~~(b) The Commissioner may reduce any fees under this~~
6 ~~section found to be in excess of direct costs.~~

7 ~~(c) The Commissioner may establish charges for copies~~
8 ~~of records, publications, or services furnished by the Plant~~
9 ~~Variety Protection Office, not specified above.~~

10 ~~**Sec. 32. Payment of Plant Variety Protection Fees; Re-**~~
11 ~~**turn of Excess Amounts.**~~

12 ~~All fees shall be paid to the Commissioner, who shall~~
13 ~~deposit the same in the Treasury of the United States in~~
14 ~~such manner as the Secretary of the Treasury directs, and~~
15 ~~the Commissioner may refund any sum paid by mistake~~
16 ~~or in excess of the fee required.~~

17 ~~**TITLE II PROTECTABILITY OF PLANT**~~
18 ~~**VARIETIES AND CERTIFICATES OF PRO-**~~
19 ~~**TECTION**~~

Chapter	Section
4. Protectability of Plant Varieties	41
5. Applications: Form, Who May File, Relating Back, Confiden-	
 tiality	51
6. Examination: Response Time, Initial Appeals	61
7. Appeals to Courts and Other Review	71
8. Certificates of Plant Variety Protection	81
9. Reexamination after Issue, and Contested Proceedings	91

~~Chapter 4. PROTECTABILITY OF PLANT
VARIETIES~~

~~Sec. 41. Definitions and Rules of Construction.~~

~~The definitions and rules of construction set forth in this
section apply for the purposes of this title.~~

~~(a) The term "novel variety" may be represented by,
without limitation, seed, transplants, clones, and plants, and
is satisfied if there is:~~

~~(1) Distinctness in the sense that the variety clearly
differs by one or more identifiable morphological, physio-
logical or other characteristics, as to which a difference in
genealogy may contribute evidence, from all prior varie-
ties of public knowledge at the date of determination
within the provisions of section 42; and~~

~~(2) Uniformity in the sense that any variations are
describable, predictable and commercially acceptable;
and~~

~~(3) Stability in the sense that the variety may be
sexually reproduced with its distinctive characteristics,
with a reasonable degree of reliability, or to a degree
comparable to that of other varieties of the same kind.~~

~~(b) The terms "United States" and "this country"~~

1 ~~mean the United States of America, its territories and posses-~~
2 ~~sions, and the Commonwealth of Puerto Rico.~~

3 ~~(c) The term "effective filing date," includes the filing~~
4 ~~date to which an application for plant variety protection is~~
5 ~~entitled under the provisions of section 55 of this title.~~

6 ~~(d) The term "effective filing date actually in the United~~
7 ~~States," means the earliest filing date to which an application~~
8 ~~for plant variety protection is entitled under the provisions of~~
9 ~~section 55 (b) of this title, excluding section 55 (a).~~

10 ~~(e) The term "kind" means one or more related species~~
11 ~~or subspecies singly or collectively known by one common~~
12 ~~name, for example, soybean, flax, carrot, or radish.~~

13 ~~(f) The term "date of determination" means the date~~
14 ~~when there has been at least tentative determination that the~~
15 ~~variety has been sexually reproduced with recognized char-~~
16 ~~acteristics making it a novel variety, whether or not the~~
17 ~~novelty thereof has been determined.~~

18 ~~(g) The terms "breeder" and "discoverer" shall each~~
19 ~~include the other as shall the terms "breed," "develop" and~~
20 ~~"discovery". The breeders or discoverers are those who direct~~
21 ~~the final breeding, creating the novel variety or discover the~~
22 ~~novel variety and, in either case, direct the determination~~
23 ~~required by subsection (f).~~

24 ~~(h) The term "sexually reproduced" shall include re-~~

1 ~~peated sexual production through the reproduction system~~
2 ~~designated by the breeder.~~

3 ~~(i) The term "proprietor" when distinguished from~~
4 ~~"breeder" means the employer when the breeder's work was~~
5 ~~done for hire without contrary agreement, or other owner~~
6 ~~by assignment or operation of law; but otherwise may in-~~
7 ~~clude the applicant until his position is taken by his successor~~
8 ~~in title, after which, the term "applicant" may mean~~
9 ~~proprietor.~~

10 ~~(j) The term "basic seed" means the seed planted to~~
11 ~~produce certified or commercial seed.~~

12 ~~(k) The term "testing" includes the period during~~
13 ~~which there is testing of seed or other sexually reproducible~~
14 ~~plant material, before any sale thereof, even though such~~
15 ~~material may be given out, provided the purpose is for ex-~~
16 ~~perimental testing on behalf of the proprietor, with observa-~~
17 ~~tion by or reported to the proprietor (even though the crop~~
18 ~~is used or sold for other than seed).~~

19 ~~(l) The term "public variety" means a variety in this~~
20 ~~country which is known or used, other than by the breeders~~
21 ~~and their associates, or on sale; if other than secretly or for~~
22 ~~the purpose of experimenting or testing; or as individual~~
23 ~~plants not known to be either sexually self-reproducible or~~
24 ~~repeatedly producible sexually at will.~~

~~(m) A variety described in a publication as specified in section 42 (a) is "effectively available to workers in this country" if a source from which it can be purchased is indicated in a publication or readily determinable or if the publication teaches how to produce the variety from source material available to workers in this country.~~

~~Sec. 42. Right to Plant Variety Protection; Plant Varieties~~
~~Protectable.~~

~~Whoever is the breeder or the discoverer of any novel variety of sexually reproduced plants, except as excluded in section 45, or his successor in title, shall be entitled to plant variety protection therefor, subject to the conditions and requirements of this title unless one of the following bars exists:~~

~~(1) Before the date of determination thereof by the breeder, or more than one year before the effective filing date of the application therefor, the variety was (A) a public variety in this country, or (B) effectively available to workers in this country and adequately described by a publication reasonably deemed a part of the public technical knowledge in this country which description must include a disclosure of the principal characteristics by which the variety is distinguished.~~

~~(2) The variety, though not in use or on sale in this country, was in use or on sale elsewhere, other than secretly or for the purpose of experimenting or testing,~~

1 by or in the knowledge of the applicant or his predeces-
 2 sor in title, or their agents or representatives, more than
 3 one year before the effective date of the application there-
 4 for.

5 (3) An application for protection of the variety
 6 based on the same breeders acts, was filed in a foreign
 7 country by the proprietor or his privies more than one
 8 year before the effective filing date actually in the United
 9 States.

10 (4) Another is entitled to an earlier date of de-
 11 termination for the variety: *Provided, however,* That the
 12 benefit of a date of determination can be lost by not con-
 13 tinuing a program of development and testing to com-
 14 mercialization.

15 **Sec. 43. Reciprocity Limits.**

16 Protection under the Act shall be limited to proprietors
 17 who are nationals of the United States, except where this lim-
 18 itation would violate a treaty and except that proprietors
 19 who are nationals of a foreign state in which they are dom-
 20 iciled shall be entitled to so much of the protection here
 21 afforded as is afforded by said foreign state to nationals of the
 22 United States for the same genus and species.

23 **Sec. 44. Public Interest In Wide Usage.**

24 The Secretary may declare a protected variety open to

~~1 use on a basis of equitable remuneration to the proprietor,~~
~~2 not less than a reasonable royalty, when he determines that~~
~~3 such declaration is necessary in order to insure an adequate~~
~~4 supply of fiber, food or feed in this country and that the~~
~~5 proprietor is not supplying the public needs at a price which~~
~~6 may reasonably be deemed fair. Such declaration may be,~~
~~7 with or without limitation, with or without designation of~~
~~8 what the remuneration is to be; and shall be subject to re-~~
~~9 view as under section 71 or 72 (any finding that the price~~
~~10 is not reasonable being reviewable), and shall remain in~~
~~11 effect not more than two years. In the event litigation is~~
~~12 required to collect such remuneration, a higher rate may be~~
~~13 allowed by the court.~~

~~14 **Sec. 45. Exclusions From Eligibility for Protection.**~~

~~15 Protection under this Act shall not be available for:~~

~~16 (a) Fungi and Bacteria,~~

~~17 (b) Hybrids.~~

~~18 **Chapter 5.—APPLICATIONS: FORM, WHO MAY FILE,**~~
~~19 **RELATING BACK, CONFIDENTIALITY**~~

~~20 **Sec. 51. Application for Recognition of Plant Variety**~~
~~21 **Rights.**~~

~~22 (a) An application for a certificate of Plant Variety~~
~~23 Protection may be filed by either the breeder or the pro-~~
~~24 prietor of the variety sought to be protected. The applica-~~
~~25 tion shall be made in writing to the Commissioner, shall be~~

1 ~~signed by or on behalf of the applicant, and shall be accom-~~
2 ~~panied by the prescribed fee. An application filed by a per-~~
3 ~~son not the breeder shall state the basis on which it is filed.~~

4 ~~(b) An error as to the naming of the breeder, without~~
5 ~~deceptive intent, may be corrected at any time, in accordance~~
6 ~~with regulation established by the Commissioner.~~

7 **~~Sec. 52. Content of Application.~~**

8 ~~An application for a certificate recognizing plant variety~~
9 ~~rights shall contain:~~

10 ~~(1) The name of the variety except that a tempo-~~
11 ~~rary designation will suffice until the certificate is to be~~
12 ~~issued.~~

13 ~~(2) A description of the variety setting forth its~~
14 ~~novelty and a description of the genealogy and breeding~~
15 ~~procedure, when known. The Commissioner may require~~
16 ~~amplification, including the submission of adequate~~
17 ~~photographs or drawings or plant specimens, if the~~
18 ~~description is not adequate or as complete as is reason-~~
19 ~~ably possible, and submission of records or proof of~~
20 ~~proprietaryship or of allegations made in the application.~~

21 ~~A proprietor may add to or correct the description at~~
22 ~~any time, before the certificate is issued, upon a showing~~
23 ~~acceptable to the Commissioner that the revised descrip-~~
24 ~~tion is retroactively accurate. Courts shall protect others~~
25 ~~from any injustice which would result. The Commis-~~

1 ~~sioner may accept records of the originator and of any~~
2 ~~official seed certifying agency in this country as evidence~~
3 ~~of stability where applicable.~~

4 ~~(3) A declaration that a viable sample of basic seed~~
5 ~~necessary for propagation of the variety will be deposited~~
6 ~~and replenished periodically in a public repository in~~
7 ~~accordance with regulations to be established hereunder.~~
8 ~~This declaration may be added by amendment.~~

9 ~~**Sec. 53. Joint Breeders.**~~

10 ~~(a) When two or more persons are the breeders, one~~
11 ~~(or his successor) may apply, naming the others.~~

12 ~~(b) The Commissioner, after such notice as he may~~
13 ~~prescribe, may issue a certificate of plant variety protection~~
14 ~~to the applicant and such of the other breeders as may have~~
15 ~~subsequently joined in the application.~~

16 ~~**Sec. 54. Death or Incapacity of Breeder.**~~

17 ~~Legal representatives of deceased breeders and of those~~
18 ~~under legal incapacity may make application for plant vari-~~
19 ~~ety protection upon compliance with the requirements and~~
20 ~~on the same terms and conditions applicable to the breeder~~
21 ~~or proprietor.~~

22 ~~**Sec. 55. Benefit of Earlier Filing Date.**~~

23 ~~(a) An application for plant variety protection for a~~
24 ~~variety filed in this country by a person who has, or whose~~

1 predecessor or successor in title has, previously filed an
2 application for plant variety protection for the same variety
3 by the same breeder in a foreign country which affords simi-
4 lar privileges in the case of applications filed in the United
5 States or to citizens of the United States, shall have the same
6 effect as the same application would have if filed in the
7 United States on the date on which the application for plant
8 variety protection for the same variety was first filed in any
9 foreign country, if the application in this country is filed
10 within twelve months from the earliest date on which such
11 foreign application was filed. No application shall be entitled
12 to a right of priority under this section, unless the applicant
13 designates the foreign application in his application or by
14 amendment thereto and, if required by the Commissioner,
15 furnishes such copy, translation or both, as the Commissioner
16 may specify.

17 (b) An application for a certificate of plant variety pro-
18 tection for the same variety as was the subject of an applica-
19 tion previously filed in the United States by or on behalf
20 of the same proprietor, or by his predecessor in title, shall
21 have the same effect as to such variety as though filed on
22 the date of the prior application if filed before the issuance
23 of the certificate or termination of proceedings on the first
24 application or on an application similarly entitled to the
25 benefit of the filing date of the first application and if con-

1 tains or is amended to contain a specific reference to the
2 earlier filed application.

3 ~~(c) A later application shall not by itself establish that~~
4 ~~a characteristic newly described was in the variety at the~~
5 ~~time of the earlier application.~~

6 ~~Sec. 56. Confidential Status of Application.~~

7 ~~Applications for plant variety protection and their con-~~
8 ~~tents shall be kept in confidence by the Plant Variety Pro-~~
9 ~~tection Office, by the Board, and by the offices in the De-~~
10 ~~partment of Agriculture to which access may be given under~~
11 ~~regulations. No information concerning the same shall be~~
12 ~~given without the authority of the applicant or proprietor,~~
13 ~~unless necessary under special circumstances as may be de-~~
14 ~~termined by the Commissioner, except that the Commis-~~
15 ~~sioner may publish the variety names designated in applica-~~
16 ~~tions, stating the kind to which each applies.~~

17 ~~Sec. 57. Publication.~~

18 ~~The Commissioner may establish regulations for the~~
19 ~~publication of pending applications at the request of the~~
20 ~~proprietor.~~

21 ~~Chapter 6.—EXAMINATION, RESPONSE TIME, INI-~~ 22 ~~TIAL APPEALS~~

23 ~~Sec. 61. Examination of Application.~~

24 ~~The Commissioner shall cause an examination to be~~
25 ~~made of the application and if on such examination it is~~

1 ~~determined that the applicant is entitled to plant variety~~
2 ~~protection under the law, the Commissioner shall issue a~~
3 ~~notice of allowance of plant variety protection therefor as~~
4 ~~hereinafter provided.~~

5 ~~**Sec. 62. Notice of Refusal; Reconsideration.**~~

6 ~~(a) Whenever an application is refused, or any objection~~
7 ~~or requirement made by the examiner, the Commissioner~~
8 ~~shall notify the applicant thereof, stating the reasons therefor,~~
9 ~~together with such information and references as may be~~
10 ~~useful in judging the propriety of continuing the prosecution~~
11 ~~of the application; and if after receiving such notice the~~
12 ~~applicant requests reconsideration, with or without amend-~~
13 ~~ment, the application shall be reconsidered.~~

14 ~~(b) For taking appropriate action after a refusal, an~~
15 ~~applicant shall be allowed six months, or such other time as~~
16 ~~the Commissioner in exceptional circumstances shall set in the~~
17 ~~refusal, or such time as he may allow as an extension. With-~~
18 ~~out such extension, action may be taken up to three months~~
19 ~~late by paying a delayed filing fee.~~

20 ~~**Sec. 63. Initial Appeal.**~~

21 ~~When an application for plant variety protection has been~~
22 ~~refused by the examiner, the applicant may appeal from the~~
23 ~~decision of the examiner to the Commissioner. The Commis-~~
24 ~~sioner shall seek the advice of the Plant Variety Protection~~
25 ~~Board on all appeals, before deciding the appeal.~~

1 ~~Chapter 7.—APPEALS TO COURTS AND OTHER~~
2 ~~REVIEW~~

3 ~~Sec. 71. Appeals.~~

4 ~~From decisions made on appeal within the Plant Variety~~
5 ~~Protection Office, and also under the provisions of section 92,~~
6 ~~appeal may be taken under the Federal Rules of Appellate~~
7 ~~Procedure. The Court of Customs and Patent Appeals shall~~
8 ~~have jurisdiction, without limitation to that court.~~

9 ~~Sec. 72. Civil Action Against Commissioner.~~

10 ~~An applicant dissatisfied with a decision under section 63~~
11 ~~or 91 of this title, may, as an alternative to appeal, have~~
12 ~~remedy by civil action against the Commissioner in the~~
13 ~~United States District Court for the District of Columbia.~~
14 ~~Such action shall be commenced within sixty days after such~~
15 ~~decision or within such further time as the Commissioner~~
16 ~~allows. The court may, in the case of review of a decision by~~
17 ~~the Commissioner refusing plant variety protection, adjudge~~
18 ~~that such applicant is entitled to receive a certificate of plant~~
19 ~~variety protection for his variety as specified in his applica-~~
20 ~~tion as the facts of the case may appear, on compliance with~~
21 ~~the requirements of this Act.~~

22 ~~Sec. 73. Appeal or Civil Action in Contested Cases.~~

23 ~~(a) A party to a proceeding under section 92 of this~~
24 ~~title, dissatisfied with the decision, may take an appeal under~~
25 ~~section 71 or may have remedy by civil action if commenced~~

~~1 within sixty days after such decision or within such further
2 time as the Commissioner allows. A party contemplating ap-
3 peal as provided herein shall notify any adverse party of his
4 intention and such adverse party, not the Commissioner, shall
5 have the right, by notice served within ten days of the notice
6 to him, to elect that any review shall be by civil action. In
7 such suits the record in the Plant Variety Protection Office
8 shall be admitted on motion of either party upon the terms
9 and conditions as to costs, expenses, and the further cross-
10 examination of witnesses, as the court imposes, without prej-
11 udice to the right of the parties to take further testimony.
12 The testimony and exhibits of the record in the Plant Variety
13 Protection Office when admitted shall have the same effect as
14 if originally taken and produced in the suit.~~

~~15 (b) Such suit may be instituted against the party in
16 interest as shown by the record of the Plant Variety Protec-
17 tion Office at the time of the decision complained of, but any
18 party in interest may become a party to the action. If there
19 be adverse parties residing in a plurality of districts not em-
20 braced within the same State, or an adverse party residing
21 in a foreign country, the United States District Court for the
22 District of Columbia, or any United States district court to
23 which it may transfer the case, shall have jurisdiction and
24 may issue summons against the adverse parties directed to
25 the marshal of any district in which any adverse party resides.~~

~~1 Summons against adverse parties residing in foreign countries
2 may be served by publication or otherwise as the court
3 directs. The Commissioner shall not be made a party but he
4 shall have the right to intervene. Judgment of the court in
5 favor of the right of an applicant to plant variety protection
6 shall authorize the Commissioner to issue a certificate of plant
7 variety protection on the filing in the Plant Variety Protec-
8 tion Office of a certified copy of the judgment and on com-
9 pliance with the requirements of this Act.~~

~~10 Chapter 8. CERTIFICATES OF PLANT VARIETY
11 PROTECTION~~

~~12 Sec. 81. Plant Variety Protection.~~

~~13 (a) If it appears that the proprietor is entitled to plant
14 variety protection under the law, a written notice of allow-
15 ance shall be given or mailed to the proprietor. The notice
16 shall specify the sum, constituting the issue fee, which shall
17 be paid within one month thereafter.~~

~~18 (b) Upon timely payment of this sum, and provided
19 that deposit of seed has been made in accordance with sec-
20 tion 52 (c), the certificate of plant variety protection shall
21 issue.~~

~~22 (c) If any payment required by this section is not
23 timely made, but is submitted with the fee for delayed
24 payment within nine months after the due date, or within
25 such further time as the Commissioner may allow, it shall
26 be accepted.~~

1 ~~Sec. 82. How Issued.~~

2 ~~A certificate of plant variety protection shall be issued~~
3 ~~in the name of the United States of America under the seal~~
4 ~~of the Plant Variety Protection Office, and shall be signed~~
5 ~~by the Commissioner or have his signature placed thereon,~~
6 ~~and shall be recorded in the Plant Variety Protection Office.~~

7 ~~Sec. 83. Contents and Term of Plant Variety Protection.~~

8 ~~(a) Every certificate of plant variety protection shall~~
9 ~~certify that the breeder or proprietor, his heirs or assignees,~~
10 ~~has the right, during the term of the plant variety protection,~~
11 ~~to exclude others from selling the variety, or offering it~~
12 ~~for sale, or reproducing it, or importing it, or exporting it,~~
13 ~~or using it in producing (as distinguished from developing)~~
14 ~~a hybrid or different variety therefrom, to the extent pro-~~
15 ~~vided by this Act. If the proprietor so elects, the certificate~~
16 ~~shall also specify that in the United States seed of the variety~~
17 ~~shall be sold by variety name only as a class of certified~~
18 ~~seed and, if specified, shall also conform to the number of~~
19 ~~generations designated by the proprietor. Any rights, or all~~
20 ~~rights except those elected under the preceding sentence,~~
21 ~~may be waived; and the certificate shall conform to such~~
22 ~~waiver. The Commissioner may at his discretion permit such~~
23 ~~election or waiver to be made after certifying and amend~~
24 ~~the certificate accordingly, without retroactive effect.~~

25 ~~(b) The term of plant variety protection shall expire~~

~~1 seventeen years from the date of issue of the certificate in
2 the United States. If the certificate is not issued within
3 three years from the effective filing date, the Commissioner
4 may shorten the term by the amount of time attributed to
5 the applicant.~~

~~6 (c) The term of Plant Variety Protection shall also ex-
7 pire if a proprietor fails to comply with regulations, in force
8 at the time of certificating, relating to replenishing seed in
9 a public repository: *Provided, however, That this expira-*
10 *tion shall not occur unless notice is mailed to the proprietor*
11 *and he fails, within the time allowed thereafter, not less than*
12 *three months, to comply with said regulations, paying the*
13 *delayed fee in section 31 (a) (8).*~~

~~14 **Sec. 84. Certificate of Correction of Plant Variety Protec-**
15 **tion Office Mistake.**~~

~~16 Whenever a mistake in certificating a protected plant
17 variety, incurred through the fault of the Plant Variety
18 Protection Office, is clearly disclosed by the records of the
19 Office, the Commissioner may issue a certificate of correc-
20 tion stating the fact and nature of such mistake, under seal,
21 without charge, to be recorded in the records of plant variety
22 protection. A copy thereof shall be attached to each copy
23 of the application of the plant variety protection and such
24 certificate shall be considered as part of the original certifi-
25 cate of plant variety protection. Every such certificate of~~

1 ~~plant variety protection shall have the same effect and opera-~~
2 ~~tion in law on the trial of action as if the same had been~~
3 ~~originally issued in such corrected form. The Commissioner~~
4 ~~may issue a corrected certificate of plant variety protection~~
5 ~~without charge in lieu of and with like effect as a certificate~~
6 ~~of correction.~~

7 **~~Sec. 85. Certificate of Correction of Applicant's Mistake.~~**

8 ~~Whenever a mistake of a clerical or typographical na-~~
9 ~~ture, or of minor character, or in the description of the~~
10 ~~variety, which was not the fault of the Plant Variety Pro-~~
11 ~~tection Office, appears in certifying a plant variety protec-~~
12 ~~tion and a showing has been made that such mistake oc-~~
13 ~~curred in good faith, the Commissioner may, upon payment~~
14 ~~of the required fee, issue a certificate of correction, if the~~
15 ~~correction unquestionably could have been made before the~~
16 ~~certificate issued. Such certificate of plant variety protection~~
17 ~~shall have the same effect and operation in law on the trial~~
18 ~~of actions for causes thereafter arising as if the same had~~
19 ~~been originally issued in such corrected form.~~

20 **~~Sec. 86. Correction of Named Breeder.~~**

21 ~~An error as to the naming of a breeder in the applica-~~
22 ~~tion, without deceptive intent, shall not affect validity of plant~~
23 ~~variety protection and may be corrected at any time by the~~
24 ~~Commissioner in accordance with regulations established by~~

1 ~~him or upon order of a federal court before which the matter~~
2 ~~is called in question. Upon such correction the Commissioner~~
3 ~~shall issue a certificate accordingly. Such correction shall not~~
4 ~~deprive a breeder of any rights he otherwise would have had.~~

5 ~~Chapter 9.—REEXAMINATION AFTER ISSUE, AND~~
6 ~~CONTESTED PROCEEDINGS~~

7 ~~Sec. 91. Reexamination After Issue.~~

8 ~~(a) Any person may, within five years after the issu-~~
9 ~~ance of a certificate of plant variety protection, notify the~~
10 ~~Commissioner in writing of facts which may have a bearing~~
11 ~~on the protectability of the variety, and the Commissioner~~
12 ~~may cause such plant variety protection to be reexamined~~
13 ~~in the light thereof.~~

14 ~~(b) Reexamination of plant variety protection under~~
15 ~~this section and appeals shall be pursuant to the same pro-~~
16 ~~cedures and with the same rights as for original examina-~~
17 ~~tions. Abandonment of the procedure while subject to a rul-~~
18 ~~ing against the retention of the certificate shall result in can-~~
19 ~~cellation of the plant variety certificate thereon and notice~~
20 ~~thereof shall be endorsed on copies of the specification of the~~
21 ~~protected plant variety thereafter distributed by the Plant~~
22 ~~Variety Protection Office.~~

23 ~~(c) If a person acting under subsection (a), within the~~
24 ~~time specified above, makes a prima facie showing of facts~~
25 ~~needing proof, the Commissioner may direct that the reexami-~~

1 ~~nation include such interparty proceedings as he shall~~
2 ~~establish.~~

3 ~~Sec. 92. Priority Contest.~~

4 ~~(a) If the Commissioner determines that two applica-~~
5 ~~tions of different breeders or proprietors may be based on the~~
6 ~~same variety, he may:~~

7 ~~(1) Initiate a priority contest on his own motion~~
8 ~~whether or not one of the applications may have been~~
9 ~~certificated; or~~

10 ~~(2) Issue a certificate on the application having the~~
11 ~~earliest effective filing date, with notice to all; or~~

12 ~~(3) Issue a certificate naming both proprietors as~~
13 ~~alternative owners, under a single variety name accept-~~
14 ~~able to both.~~

15 ~~(b) On request of one proprietor when a certificate has~~
16 ~~been issued naming another proprietor as an owner or alter-~~
17 ~~native owner, both having applied for protection on the same~~
18 ~~variety, the Commissioner shall institute a priority contest;~~
19 ~~except that a proprietor shall have forfeited his right to assert~~
20 ~~priority for the purpose of obtaining plant variety protection~~
21 ~~when an adverse certificate has issued if he fails to make the~~
22 ~~request within one year of the mailing of notice specified in~~
23 ~~part (2) above or if he fails to make the request within the~~
24 ~~period for taking action after refusal of his application on the~~
25 ~~basis of the adverse certificate.~~

1 ~~Sec. 93. Effect of Adverse Final Judgment or of Non~~
2 ~~Action.~~

3 ~~(a) A final judgment under section 92 adverse to an~~
4 ~~application from which no appeal or other review had been~~
5 ~~or can be taken or had shall constitute cancellation of any~~
6 ~~certificating on that application, and notice thereof shall be~~
7 ~~endorsed on copies of the specifications of the protected plant~~
8 ~~variety thereafter distributed by the Plant Variety Protection~~
9 ~~Office.~~

10 ~~(b) Any person who has not proceeded in accordance~~
11 ~~with the provision of this chapter shall not be foreclosed or~~
12 ~~in any way prejudiced with respect to the defense of an~~
13 ~~infringement suit or affirmative relief under declaratory judg-~~
14 ~~ment proceedings.~~

15 ~~(c) No person subject to an adverse decision in a pro-~~
16 ~~ceeding under this chapter shall be foreclosed with respect to~~
17 ~~asserting comparable grounds in defense of an infringement~~
18 ~~suit or as a basis for affirmative relief under declaratory judg-~~
19 ~~ment proceedings.~~

20 ~~Sec. 94. Interfering Plant Variety Protection.~~

21 ~~The proprietor of a certificate of plant variety protection~~
22 ~~may have relief against another proprietor of a certificate of~~
23 ~~the same variety, or in case alternate owners are named, by~~
24 ~~civil action, and the court may adjudge the question of~~
25 ~~validity of the respective certificates, or the ownership of the~~

1 ~~certificate. The provisions of section 73 (b) of this title shall~~
 2 ~~apply to actions brought under this section.~~

3 **~~TITLE III—PLANT VARIETY PROTECTION~~**
 4 **~~AND RIGHTS~~**

Chapter	Section
10. Ownership and Assignment	101
11. Infringement of Plant Variety Protection	111
12. Remedies for Infringement of Plant Variety Protection, and Other Actions	121
13. Intent and Severability	131
14. Temporary Provision and Related Enactments	141

5 **~~Chapter 10.—OWNERSHIP AND ASSIGNMENT~~**

6 **~~Sec. 101. Ownership and Assignment.~~**

7 ~~(a) Subject to the provisions of this title, plant variety~~
 8 ~~protection shall have the attributes of personal property.~~

9 ~~(b) Applications for certificates of plant variety protec-~~
 10 ~~tion, or any interest in a variety, shall be assignable by an~~
 11 ~~instrument in writing. The proprietor may in like manner~~
 12 ~~grant and convey an exclusive right to use of the variety in~~
 13 ~~the whole or any specified part of the United States.~~

14 ~~(c) A certificate of acknowledgment under the hand~~
 15 ~~and official seal of a person authorized to administer oaths~~
 16 ~~within the United States, or in a foreign country, of a diplo-~~
 17 ~~matic or consular officer of the United States or an officer~~
 18 ~~authorized to administer oaths whose authority is proved by~~
 19 ~~a certificate of a diplomatic or consular officer of the United~~
 20 ~~States, shall be prima facie evidence of the execution of an~~

1 ~~assignment, grant or conveyance of plant variety protection~~
2 ~~or application for plant variety protection.~~

3 ~~(d) An assignment, grant, conveyance or license shall~~
4 ~~be void as against any subsequent purchaser or mortgagee for~~
5 ~~a valuable consideration, without notice, unless it, or an~~
6 ~~acknowledgment by the assignor, and so forth, that there is~~
7 ~~such encumbrance, is recorded in the Plant Variety Protec-~~
8 ~~tion Office within one month from its date or one month prior~~
9 ~~to the date of such subsequent purchase or mortgage.~~

10 **~~Sec. 102. Ownership During Testing.~~**

11 ~~An owner who, with suitable notice, releases possession~~
12 ~~of seed or other sexually reproducible plant material for~~
13 ~~testing retains ownership with respect thereto; and any di-~~
14 ~~version from authorized testing, or any unauthorized reten-~~
15 ~~tion, of such material by anyone who has knowledge that~~
16 ~~it is under such notice, or who is chargeable with notice, is~~
17 ~~prohibited, and violates the property rights of the owner.~~
18 ~~Anyone receiving the material tagged or labeled with the~~
19 ~~notice is chargeable with the notice. The owner is entitled~~
20 ~~to remedy and redress in a civil action hereunder. No remedy~~
21 ~~available by state or local law is hereby excluded. No such~~
22 ~~notice shall be used, or if used be effective, when the owner~~
23 ~~has made identical sexually reproducible plant material~~
24 ~~available to the public, as by sale thereof.~~

~~Chapter 11.—INFRINGEMENT OF PLANT VARIETY
PROTECTION~~

~~Sec. 111. Infringement of Plant Variety Protection.~~

~~Except as otherwise provided in this title, it shall be an infringement of the rights of a proprietor of a novel variety to perform without authority, any of the following acts in the United States, or in commerce which can be regulated by Congress or affecting such commerce, prior to expiration of the right to plant variety protection but after either the issue of the certificate or the distribution of a novel plant variety with the notice under section 127:~~

~~(1) sell the novel variety, or offer it or expose it for sale, deliver it, ship it, consign it, exchange it, or solicit an offer to buy it, or any other transfer of title or possession of it; except as otherwise provided herein;~~

~~(2) import the novel variety into, or export it from, the United States;~~

~~(3) multiply the novel variety as a step in marketing (for growing purposes) the variety; or~~

~~(4) use the novel variety in producing (as distinguished from developing) a hybrid or different variety therefrom; or~~

~~(5) use seed which had been marked "propaga-~~

1 ~~tion prohibited" or progeny thereof to propagate the~~
2 ~~novel variety; or~~

3 ~~(6) dispense the novel variety to another, in a~~
4 ~~form which can be propagated, without notice as to~~
5 ~~being a protected variety under which it was received;~~
6 ~~or~~

7 ~~(7) perform any of the foregoing acts even in in-~~
8 ~~stances in which the novel variety is multiplied other-~~
9 ~~than sexually; or~~

10 ~~(8) instigate or actively induce performance of any~~
11 ~~of the foregoing acts.~~

12 **~~Sec. 112. Right To Save Seed.~~**

13 ~~Except under subsections (3) and (4) of section 111,~~
14 ~~it shall not infringe any right hereunder for a person to save~~
15 ~~seed and grow the resulting variety for his own use.~~

16 **~~Sec. 113. Private Defense Against Delayed Application.~~**

17 ~~No plant variety protection under this Act shall abridge~~
18 ~~the rights of any person who had developed a variety or his~~
19 ~~successor in business to produce, reproduce or sell his own~~
20 ~~variety, beginning more than one year prior to the effective~~
21 ~~filing date of an adverse application for a certificate of plant~~
22 ~~variety protection.~~

23 **~~Sec. 114. Crop Exemption.~~**

24 ~~It shall not be an infringement to sell seed grown from~~
25 ~~the protected variety, obtained (for growing) by authority~~

1 ~~of the proprietor or by saving seed under section 112, for use~~
 2 ~~as food, feed, in manufacture or the like, if the sale is bona~~
 3 ~~fide for that purpose, and is in channels which are usual for~~
 4 ~~that purpose and in a manner exclusively for that purpose. A~~
 5 ~~purchaser who diverts such seed from those channels to grow-~~
 6 ~~ing purposes shall not be entitled to any benefit for lack of~~
 7 ~~notice under section 127.~~

8 **~~Sec. 115. Research Exemption.~~**

9 ~~The use and reproduction of a protected variety for plant~~
 10 ~~breeding or other bona fide research shall not constitute an~~
 11 ~~infringement of the protection provided under this Act.~~

12 **~~Sec. 116. Intermediary Exemption.~~**

13 ~~It shall not be an infringement to deliver, ship, consign~~
 14 ~~or other acts of transport or change of possession when per-~~
 15 ~~formed by a mere carrier or other innocent intermediaries, or~~
 16 ~~to offer for sale by an innocent advertising medium.~~

17 **~~Chapter 12.—REMEDIES FOR INFRINGEMENT OF~~**
 18 **~~PLANT VARIETY PROTECTION, AND OTHER~~**
 19 **~~ACTIONS~~**

20 **~~Sec. 121. Remedy for Infringement of Plant Variety Pro-~~**
 21 **~~tection.~~**

22 ~~A proprietor shall have remedy by civil action for in-~~
 23 ~~fringement of his plant variety protection under section 111.~~
 24 ~~If a variety is sold under the name of a proprietor's variety as~~

1 ~~shown in his certificate, there is a prima facie presumption~~
2 ~~that it is the same variety.~~

3 **~~Sec. 122. Presumption of Validity; Defenses.~~**

4 ~~(a) Certificates of plant variety protection shall be pre-~~
5 ~~sumed valid. The burden of establishing invalidity of a plant~~
6 ~~variety protection shall rest on the party asserting invalidity.~~

7 ~~(b) The following shall be defenses in any action charg-~~
8 ~~ing infringement and shall be pleaded: (1) noninfringement,~~
9 ~~absence of liability for infringement, or unenforceability; (2)~~
10 ~~invalidity of the plant variety protection in suit on any~~
11 ~~ground specified in section 42 of this title as a condition for~~
12 ~~protectability; (3) invalidity of the plant variety protection~~
13 ~~in suit for failure to comply with any requirement of section~~
14 ~~52; (4) that the asserted infringement was performed un-~~
15 ~~der an existing certificate adverse to that asserted and prior~~
16 ~~to notice of the infringement; and (5) any other fact or~~
17 ~~act made a defense by this Act.~~

18 **~~Sec. 123. Injunction.~~**

19 ~~The several courts having jurisdiction of cases under this~~
20 ~~title may grant injunctions in accordance with the principles~~
21 ~~of equity to prevent the violation of any right hereunder on~~
22 ~~such terms as the court deems reasonable.~~

23 **~~Sec. 124. Damages.~~**

24 ~~(a) Upon finding for the proprietor the court shall~~
25 ~~award damages adequate to compensate for the infringement~~

1 ~~but in no event less than a reasonable royalty for the use~~
2 ~~made of the variety by the infringer, together with interest~~
3 ~~and costs as fixed by the court.~~

4 ~~(b) When the damages are not determined by the jury,~~
5 ~~the court shall determine them. In either event the court may~~
6 ~~increase the damages up to three times the amount deter-~~
7 ~~mined.~~

8 ~~(c) The court may receive expert testimony as an aid~~
9 ~~to the determination of damages or of what royalty would~~
10 ~~be reasonable under the circumstances.~~

11 ~~(d) As to infringement prior to, or resulting from a~~
12 ~~planting prior to, issuance of a certificate for the infringed~~
13 ~~variety, a court finding the infringer to have established~~
14 ~~innocent intentions, shall have discretion as to awarding~~
15 ~~damages.~~

16 **~~Sec. 125. Attorney Fees.~~**

17 ~~The court in exceptional cases may award reasonable~~
18 ~~attorney fees to the prevailing party.~~

19 **~~Sec. 126. Time Limitation on Damages.~~**

20 ~~(a) No recovery shall be had for any infringement~~
21 ~~committed more than six years (or three years with knowl-~~
22 ~~edge of the proprietor) prior to the filing of the complaint~~
23 ~~or counterclaim for infringement in the action.~~

24 ~~(b) In the case of claims against the United States~~

~~1 Government for unauthorized use of a protected variety, the
2 period before bringing suit, up to six years, between the date
3 of receipt of written claim for compensation by the depart-
4 ment or agency of the Government having authority to settle
5 such claim, and the date of mailing by the Government of a
6 notice to the claimant that his claim has been denied shall
7 not be counted as part of the period referred to in the pre-
8 ceding paragraph.~~

~~9 **Sec. 127. Limitation of Damages; Marking and Notice.**~~

~~10 Proprietors may give notice to the public by physically
11 associating with or affixing to the container of seed of a novel
12 variety or by fixing to the novel variety, a label containing
13 the words "Propagation Prohibited" and after the certificate
14 issues, such additional words as "U.S. Protected Variety".
15 In the event the novel variety is distributed by authorization
16 of the proprietor and is received by the infringer without
17 such marking, no damages shall be recovered against such
18 infringer by the proprietor in any action for infringement,
19 except on proof that the infringer was notified of the in-
20 fringement and continued to infringe thereafter, in which
21 event damages may be recovered only for infringement oc-
22 curring after such notice. As to both damages and injunc-
23 tion, a court shall have discretion to be lenient as to disposal
24 of materials acquired in good faith by acts prior to such
25 notice.—~~

1 ~~Sec. 128. False Marking.~~

2 ~~(a) Each of the following acts, if performed in connec-~~
 3 ~~tion with the sale, offering for sale, or advertising of sexually~~
 4 ~~reproducible plant material, is prohibited, and the Commis-~~
 5 ~~sioner may, if he determines after an opportunity for hear-~~
 6 ~~ing that the act is being so performed, issue an order to~~
 7 ~~cease and desist, said order being binding unless appealed~~
 8 ~~to the appropriate United States Court of Appeals under~~
 9 ~~the Federal Rules of Appellate Procedure:~~

10 ~~(1) Use of the words "U.S. Protected Variety"~~
 11 ~~or any word or number importing that the material is~~
 12 ~~a variety protected under certificate, when it is not.~~

13 ~~(2) Use of any wording importing that the ma-~~
 14 ~~terial is a variety for which an application for plant~~
 15 ~~variety protection is pending, when it is not.~~

16 ~~(3) Use of the phrase "propagation prohibited" or~~
 17 ~~similar phrase without reasonable basis, a statement of~~
 18 ~~this basis being promptly filed with the Commissioner if~~
 19 ~~the phrase is used beyond experimental testing and no~~
 20 ~~application has been filed. Any reasonable basis expires~~
 21 ~~one year after commencement of use of the phrase be-~~
 22 ~~yond experimental testing except as justified thereafter~~
 23 ~~by a pending application or a certificate still in force.~~

24 ~~(b) Anyone convicted of violating a binding cease and~~

1 ~~desist order, or of performing any act prohibited in sub-~~
2 ~~section (a) of this section for the purpose of deceiving the~~
3 ~~public, shall be fined not more than \$10,000 and not less~~
4 ~~than \$500.~~

5 ~~(c) Anyone whose business is damaged or is likely to~~
6 ~~be damaged by an act prohibited in subsection (a) of this~~
7 ~~section, or is subjected to competition in connection with~~
8 ~~which such act is performed, may have remedy by civil~~
9 ~~action.~~

10 **~~Sec. 129. Nonresident Proprietors; Service and Notice.~~**

11 ~~Every proprietor not residing in the United States may~~
12 ~~file in the Plant Variety Protection Office a written desig-~~
13 ~~nation stating the name and address of a person residing~~
14 ~~within the United States on whom may be served process~~
15 ~~or notice of proceedings affecting the plant variety protec-~~
16 ~~tion or rights thereunder. If the person designated cannot~~
17 ~~be found at the address given in the last designation, or if~~
18 ~~no person has been designated, the United States District~~
19 ~~Court for the District of Columbia shall have jurisdiction~~
20 ~~and summons shall be served by publication or otherwise as~~
21 ~~the court directs. The court shall have the same jurisdiction~~
22 ~~to take any action respecting the plant variety protection, or~~
23 ~~rights thereunder that it would have if the proprietor were~~
24 ~~personally within the jurisdiction of the court.~~

1 ~~Chapter 13. INTENT AND SEVERABILITY~~

2 ~~Sec. 131. Intent.~~

3 ~~It is the intent of Congress to provide the indicated~~
4 ~~protection for new varieties by exercise of any constitutional~~
5 ~~power needed for that end, so as to afford adequate encour-~~
6 ~~agement for research, and for marketing when appropriate,~~
7 ~~to yield for the public the benefits of new varieties. Consti-~~
8 ~~tutional clauses 3 and 8 of article I, section 8 are both relied~~
9 ~~upon.~~

10 ~~Sec. 132. Severability.~~

11 ~~If this Act is held unconstitutional as to some provisions~~
12 ~~or circumstances, it shall remain in force as to the remainder~~
13 ~~or with necessary implied limitations as to other circum-~~
14 ~~stances, except that in no event may a provision, because a~~
15 ~~stated exemption from that provision is invalid, be effective~~
16 ~~in the area of that exemption.~~

17 ~~Chapter 14. TEMPORARY PROVISION AND RE-~~
18 ~~LATED ENACTMENTS~~

19 ~~Sec. 141. Effective Date.~~

20 ~~The foregoing Act shall take effect upon approval.~~
21 ~~Applications may be filed with the Secretary and held by him~~
22 ~~until the Office of Plant Variety Protection is organized and~~
23 ~~in operation.~~

24 ~~Sec. 142. Amendment of Federal Seed Act.~~

1 ~~The Federal Seed Act (53 Stat. 1275) is amended as~~
 2 ~~follows:~~

3 ~~(a) By adding at the end thereof:~~

4 ~~**"TITLE V SALE OF UNCERTIFIED SEED OF**~~
 5 ~~**PROTECTED VARIETY**~~

6 ~~**"Section 501.**~~

7 ~~"(a) It shall be unlawful in the United States or in in-~~
 8 ~~terstate or foreign commerce to sell by variety name seed not~~
 9 ~~certified by an official seed certifying agency when it is a~~
 10 ~~variety for which a certificate of plant variety protection~~
 11 ~~under the Plant Variety Protection Act specifies sale only~~
 12 ~~as a class of certified seed: *Provided*, That such seed may~~
 13 ~~be labeled as to variety name when used in a mixture by, or~~
 14 ~~with the approval of, the proprietor of the variety."~~

15 ~~(b) By adding at the end of section 102 the following~~
 16 ~~wording: Seed shall be certified only when the basic seed~~
 17 ~~from which a variety was produced was furnished by the~~
 18 ~~originator of the variety, his successor in title, and, when~~
 19 ~~specified, conforms to the number of generations designated~~
 20 ~~by the originator.~~

21 ~~**Sec. 143. Amendment of Judicial Code.**~~

22 ~~Title 28 of the United States Code, entitled Judicial~~
 23 ~~Code and Judiciary, is amended as follows:~~

24 ~~(a) After section 1544 add:~~

1 **Sec. 1545. Decision of the Plant Variety Protection Office.**

2 The Court of Customs and Patent Appeals shall have
3 nonexclusive jurisdiction to review by appeal decisions of
4 the Plant Variety Protection Office, provided that the deci-
5 sion appealed from is on appeal within the Plant Variety
6 Protection Office, if such appeal is permitted.

7 (b) In section 1338 after "Patents" in the heading,
8 after "patents" and after "patent" (both occurrences) insert
9 " , plant variety protection".

INDEX

	Section
TITLE I —Plant Variety Protection Office.....	1
TITLE II —Protectability of Plant Varieties and Certificates of Protection.....	41
TITLE III—Plant Variety Protection and Rights.....	101

10 **TITLE I—PLANT VARIETY PROTECTION OFFICE**

Chapter	Section
1. Organization and Publications.....	1
2. Legal Provisions as to the Plant Variety Protection Office.....	21
3. Plant Variety Protection Fees.....	31

11 **Chapter 1.—ORGANIZATION AND PUBLICATIONS**

12 **Section 1. Establishment.**

13 There is hereby established in the Department of Agri-
14 culture a bureau to be known as the Plant Variety Protec-
15 tion Office, which shall have the functions set forth in this
16 Act.

17 **Sec. 2. Seal.**

18 The Plant Variety Protection Office shall have a seal
19 with which documents and certificates evidencing plant
20 variety protection shall be authenticated.

1 **Sec. 3. Organization.**

2 *The organization of the Plant Variety Protection Office*
3 *shall, except as provided herein, be determined by the Secre-*
4 *tary of Agriculture (hereinafter called the Secretary). The*
5 *office shall devote itself substantially exclusively to the*
6 *administration of this Act.*

7 **Sec. 4. Restrictions on Employees as to Interest in Plant**
8 **Variety Protection.**

9 *Employees of the Plant Variety Protection Office shall*
10 *be ineligible during the periods of their employment, to apply*
11 *for plant variety protection and to acquire directly or in-*
12 *directly, except by inheritance or bequest, any right or*
13 *interest in any matters before that office. This section shall*
14 *not apply to members of the Plant Variety Protection Board*
15 *who are not otherwise employees of the Plant Variety Protec-*
16 *tion Office.*

17 **Sec. 5. Bond of Employees.**

18 *Such employees as the Secretary designates, before enter-*
19 *ing upon their duties, shall severally give bond, with sureties,*
20 *in sums prescribed by the Secretary, conditioned for the*
21 *faithful discharge of their respective duties and that they*
22 *shall render to the proper officers of the Treasury a true*
23 *account of all money received by virtue of their offices.*

24 **Sec. 6. Regulations.**

25 *The Secretary may establish regulations, not inconsistent*

1 *with law, for the conduct of proceedings in the Plant Variety*
2 *Protection Office after consultations with the Plant Variety*
3 *Protection Board.*

4 **Sec. 7. Plant Variety Protection Board.**

5 (a) *APPOINTMENT.*—The Secretary shall appoint a
6 *Plant Variety Protection Board. The Board shall consist*
7 *of individuals who are experts in various areas of varietal*
8 *development covered by this Act. Membership of the Board*
9 *shall include farmer representation and shall be drawn ap-*
10 *proximately equally from the private or seed industry sector*
11 *and from the sector of government or the public. The Secre-*
12 *tary or his designee shall act as chairman of the Board with-*
13 *out voting rights except in the case of ties.*

14 (b) *FUNCTIONS OF BOARD.*—The functions of the
15 *Plant Variety Protection Board shall include:*

16 (1) *Advising the Secretary concerning the adop-*
17 *tion of Rules and Regulations to facilitate the proper*
18 *administration of this Act;*

19 (2) *Making advisory decisions on all appeals from*
20 *the examiner. The Board shall determine whether to*
21 *act as a full Board or by panels it selects; and*
22 *whether to review advisory decisions made by a panel.*
23 *For service on such appeals, the Board may select, as*
24 *temporary members, experts in the area to which the*
25 *particular appeal relates; and*

1 (3) *Advising the Secretary on all questions under*
2 *section 44.*

3 (c) *COMPENSATION OF BOARD.*—*The members of the*
4 *Plant Variety Protection Board shall serve without compen-*
5 *sation except for standard government reimbursable expenses.*

6 *Sec. 8. Library.*

7 *The Secretary shall maintain a library of scientific*
8 *and other works and periodicals, both foreign and domestic,*
9 *in the Plant Variety Protection Office to aid the officers in*
10 *the discharge of their duties.*

11 *Sec. 9. Register of Protected Plant Varieties.*

12 *The Secretary shall maintain a register of published*
13 *specifications of United States protected plant varieties and*
14 *a file of such other scientific and technical information as may*
15 *be necessary or practicable.*

16 *Sec. 10. Publications.*

17 (a) *The Secretary may publish, or cause to be published,*
18 *in such format as he shall determine to be suitable, the*
19 *following:*

20 (1) *The specifications for plant variety protection*
21 *including drawings and photographs.*

22 (2) *The Official Journal of the Plant Variety Pro-*
23 *tection Office, including annual indices.*

24 (3) *Pamphlet copies of the plant variety protection*

laws and rules of practice and circulars or other publications relating to the business of the Office.

(b) The Plant Variety Protection Office may print the heading of the drawings or photographs for protected plant varieties for the purpose of photolithography and may provide suitable copy for any lithography to appear on the same page.

(c) The Secretary may (1) establish public facilities for the searching of plant variety protection records and materials, and (2) from time to time, as through an information service, disseminate to the public those portions of the technological and other public information available to or within the Plant Variety Protection Office to encourage innovation and promote the progress of the useful arts.

(d) The Secretary may exchange any of the publications specified for publications desirable for the use of the Plant Variety Protection Office. The Secretary may exchange copies of specifications, drawings, and photographs of United States protected plant varieties for copies of specifications, drawings, and photographs of applications and protected plant varieties of foreign countries.

Sec. 11. Copies for Public Libraries.

The Secretary may supply printed copies of specifications, drawings, and photographs of protected plant varieties

1 *to public libraries in the United States which shall maintain*
2 *such copies for the use of the public.*

3 **Chapter 2.—LEGAL PROVISIONS AS TO THE PLANT**
4 **VARIETY PROTECTION OFFICE**

5 **Sec. 21. Day for Taking Action Falling on Saturday, Sun-**
6 **day, or Holiday.**

7 *When the day, or the last day, for taking any action or*
8 *paying any fee in the United States Plant Variety Protection*
9 *Office falls on Saturday, Sunday, a holiday within the District*
10 *of Columbia, or on any other day the Plant Variety Protec-*
11 *tion Office is closed for the receipt of papers, the action may*
12 *be taken or the fee paid, on the next succeeding business day.*

13 **Sec. 22. Form of Papers Filed.**

14 *The Secretary may by regulations prescribe the form*
15 *of papers to be filed in the Plant Variety Protection Office.*

16 **Sec. 23. Testimony in Plant Variety Protection Office**
17 **Cases.**

18 *The Secretary may establish regulations for taking affi-*
19 *davits, depositions, and other evidence required in cases be-*
20 *fore the Plant Variety Protection Office. Any officer author-*
21 *ized by law to take depositions to be used in the courts of the*
22 *United States, or of the State where he resides, may take such*
23 *affidavits and depositions, and swear the witnesses. If any*
24 *person acts as a hearing officer by authority of the Secretary,*
25 *he shall have like power.*

1 *Sec. 24. Subpenas, Witnesses.*

2 *(a) The clerk of any United States court for the district*
3 *wherein testimony is to be taken in accordance with regula-*
4 *tions established by the Secretary for use in any contested*
5 *case in the Plant Variety Protection Office shall, upon the*
6 *application of any party thereof, issue a subpoena for any*
7 *witness residing or being within such district or within one*
8 *hundred miles of the stated place in such district, command-*
9 *ing him to appear and testify before an officer in such district*
10 *authorized to take depositions and affidavits, at the time and*
11 *place stated in the subpoena. The provisions of the Federal*
12 *Rules of Civil Procedure relating to the attendance of wit-*
13 *nesses and the production of documents and things shall apply*
14 *to contested cases in the Plant Variety Protection Office inso-*
15 *far as consistent with such regulations.*

16 *(b) Every witness subpoenaed or testifying shall be al-*
17 *lowed the fees and traveling expenses allowed to witnesses at-*
18 *tending the United States district courts.*

19 *(c) A judge of a court whose clerk issued a subpoena*
20 *may enforce obedience to the process or punish disobedience*
21 *as in other like cases, on proof that a witness, served with*
22 *such subpoena, neglected or refused to appear or to testify.*
23 *No witness shall be deemed guilty of contempt for disobeying*
24 *such subpoena unless his fees and traveling expenses in going*
25 *to, and returning from, one day's attendance at the place*

1 of examination, are paid or tendered him at the time of the
2 service of the subpoena; nor for refusing to disclose any
3 secret matter except upon appropriate order of the court
4 which issued the subpoena or of the Secretary.

5 **Sec. 25. Effect of Defective Execution.**

6 Any document to be filed in the Plant Variety Protec-
7 tion Office and which is required by any law or regulation to
8 be executed in a specified manner may be provisionally ac-
9 cepted by the Secretary despite a defective execution, pro-
10 vided a properly executed document is submitted within such
11 time as may be prescribed.

12 **Sec. 26. Regulations for Practice Before the Office.**

13 The Secretary shall prescribe regulations governing the
14 admission to practice and conduct of persons representing
15 applicants or other parties before the Plant Variety Pro-
16 tection Office. The Secretary may, after notice and oppor-
17 tunity for a hearing, suspend or exclude, either generally or
18 in any particular case, from further practice before the Of-
19 fice of Plant Variety Protection any person shown to be in-
20 competent or disreputable or guilty of gross misconduct.

21 **Sec. 27. Unauthorized Practice.**

22 Anyone who in the United States engages in direct or
23 indirect practice before the Office of Plant Variety Pro-
24 tection while suspended or excluded under section 26, or
25 without being admitted to practice before the Office, shall be

1 *liable in a civil action for the return of all money received,*
 2 *and for compensation for damage done by such person and*
 3 *also may be enjoined from such practice. However, there shall*
 4 *be no liability for damage if such person establishes that the*
 5 *work was done competently and without negligence. This*
 6 *section does not apply to anyone who, without a claim of*
 7 *self-sufficiency, works under the supervision of another who*
 8 *stands admitted and is the responsible party; nor to anyone*
 9 *who establishes that he acted only on behalf of any employer*
 10 *by whom he was regularly employed.*

11 **Chapter 3.—PLANT VARIETY PROTECTION FEES**

12 **Sec. 31. Plant Variety Protection Fees; Appropriations.**

13 *The Secretary shall, under such regulations as he may*
 14 *prescribe, charge and collect reasonable fees for services per-*
 15 *formed under this Act. The fees authorized by this section*
 16 *shall be established to substantially cover the costs ~~or~~ of admin-*
 17 *istration of this Act. Such fees shall be deposited into a fund*
 18 *to be available, without fiscal year limitation, for the admin-*
 19 *istration of this Act. The initial capital of the fund shall con-*
 20 *sist of appropriations, which are hereby authorized to be*
 21 *made. Until such time as the Secretary prescribes fees as*
 22 *provided by this section, a fee of \$50 shall be charged for*
 23 *filing each application, subject to such adjustment as may be*
 24 *appropriate after fees are prescribed by the Secretary*
 25 *hereunder.*

1 *Sec. 32. Payment of Plant Variety Protection Fees; Re-*
2 *turn of Excess Amounts.*

3 *All fees shall be paid to the Secretary, and the Secretary*
4 *may refund any sum paid by mistake or in excess of the fee*
5 *required.*

6 **TITLE II—PROTECTABILITY OF PLANT VARIETIES**
7 **AND CERTIFICATES OF PROTECTION**

<i>Chapter</i>	<i>Section</i>
<i>4. Protection of Plant Varieties</i> -----	<i>41</i>
<i>5. Applications: Form, Who May File, Relating Back, Confidentiality</i> -----	<i>51</i>
<i>6. Examination: Response Time, Initial Appeals</i> -----	<i>61</i>
<i>7. Appeals to Courts and Other Review</i> -----	<i>71</i>
<i>8. Certificates of Plant Variety Protection</i> -----	<i>81</i>
<i>9. Reexamination After Issue, and Contested Proceedings</i> -----	<i>91</i>

8 **Chapter 4.—PROTECTABILITY OF PLANT**
9 **VARIETIES**

10 *Sec. 41. Definitions and Rules of Construction.*

11 *The definitions and rules of construction set forth in this*
12 *section apply for the purposes of this Act.*

13 *(a) The term “novel variety” may be represented by,*
14 *without limitation, seed, transplants, and plants, and is satis-*
15 *fied if there is:*

16 *(1) Distinctness in the sense that the variety clearly*
17 *differs by one or more identifiable morphological, physio-*
18 *logical or other characteristics (which may include those*
19 *evidenced by processing or product characteristics, for*
20 *example, milling and baking characteristics in the case*
21 *of wheat) as to which a difference in genealogy may con-*

tribute evidence, from all prior varieties of public knowledge at the date of determination within the provisions of section 42; and

(2) Uniformity in the sense that any variations are describable, predictable and commercially acceptable; and

(3) Stability in the sense that the variety, when sexually reproduced or reconstituted, will remain unchanged with regard to its essential and distinctive characteristics with a reasonable degree of reliability commensurate with that of varieties of the same category in which the same breeding method is employed.

(b) The terms "United States" and "this country" mean the United States of America, its territories and possessions, and the Commonwealth of Puerto Rico.

(c) The term "kind" means one or more related species or subspecies singly or collectively known by one common name, for example, soybean, flax, ~~carrot~~, or radish.

(d) The term "date of determination" means the date when there has been at least tentative determination that the variety has been sexually reproduced with recognized characteristics, whether or not the novelty of those characteristics has been determined.

(e) The term "breeder" shall mean the person who—

1 (1) directs the final breeding creating the novel
2 variety, or

3 (2) discovers the novel variety, and
4 makes the tentative determination described in subsection (d).
5 Where such actions are conducted by an agent on behalf of
6 his principal, the principal, rather than the agent, shall be
7 considered the breeder. The terms "breed", "develop", "origi-
8 nate", and "discover", and derivatives thereof shall each in-
9 clude the other.

10 (f) The term "sexually reproduced" shall include any
11 production of a variety by seed.

12 (g) The term "basic seed" means the seed planted to
13 produce certified or commercial seed.

14 (h) The term "testing" means testing or experimental
15 use of a variety before any sale thereof. Sale for other than
16 seed purposes of seed or other plant material produced as the
17 result of testing shall not constitute a sale for the purpose of
18 the preceding sentence or for the purpose of the following
19 subsection.

20 (i) The term "public variety" means a variety sold or
21 used in this country, or existing in and publicly known in
22 this country; but use for the purpose of testing, or sale or
23 use as individual plants not known to be sexually repro-
24 ducible, shall not make the variety a public variety.

25 (j) A variety described in a publication as specified in

1 section 42(a)(1)(B) is "effectively available to workers in
2 this country" if a source from which it can be purchased is
3 indicated in such publication or readily determinable or if
4 such publication teaches how to produce the variety from
5 source-material effectively available to workers in this country.

6 **Sec. 42. Right to Plant Variety Protection; Plant Varieties**
7 **Protectable.**

8 (a) The breeder of any novel variety of sexually re-
9 produced plant (other than fungi, bacteria, or first genera-
10 tion hybrids) who has so reproduced the variety, or his
11 successor in interest, shall be entitled to plant variety pro-
12 tection therefor, subject to the conditions and requirements
13 of this title unless one of the following bars exists:

14 (1) Before the date of determination thereof by the
15 breeder, or more than one year before the effective filing
16 date of the application therefor, the variety was (A) a
17 public variety in this country, or (B) effectively avail-
18 able to workers in this country and adequately described
19 by a publication reasonably deemed a part of the public
20 technical knowledge in this country which description
21 must include a disclosure of the principal characteristics
22 by which the variety is distinguished.

23 (2) An application for protection of the variety
24 based on the same breeder's acts, was filed in a foreign
25 country by the owner or his privies more than one year

1 before the effective filing date of the application filed in
2 the United States.

3 ~~(3) Another is entitled to an earlier date of determina-~~

4 (3) Another is entitled to an earlier date of de-
5 termination for the same variety and such other (A)
6 has a certificate of plant variety protection hereunder
7 or (B) has been engaged in a continuing program of
8 development and testing to commercialization, or (C)
9 has within six months after such earlier date of deter-
10 mination adequately described the variety by a publica-
11 tion reasonably deemed a part of the public technical
12 knowledge in this country which description must in-
13 clude a disclosure of the principal characteristics by
14 which the variety is distinguished.

15 (b) The Secretary may, by regulation, extend for a
16 reasonable period of time the one year time period provided
17 in subsection (a) for filing applications, and may in that
18 event provide for at least commensurate reduction of the
19 term of protection.

20 **Sec. 43. Reciprocity Limits.**

21 Protection under the Act may, by regulation, be limited
22 to nationals of the United States, except where this limitation
23 would violate a treaty and except that nationals of a foreign
24 state in which they are domiciled shall be entitled to so much
25 of the protection here afforded as is afforded by said foreign

1 state to nationals of the United States for the same genus
2 and species.

3 **Sec. 44. Public Interest In Wide Usage.**

4 *The Secretary may declare a protected variety open to*
5 *use on a basis of equitable remuneration to the owner, not*
6 *less than a reasonable royalty, when he determines that such*
7 *declaration is necessary in order to insure an adequate sup-*
8 *ply of fiber, food, or feed in this country and that the owner*
9 *is unwilling or unable to supply the public needs for the*
10 *variety at a price which may reasonably be deemed fair.*
11 *Such declaration may be, with or without limitation, with or*
12 *without designation of what the remuneration is to be; and*
13 *shall be subject to review as under section 71 or 72 (any*
14 *finding that the price is not reasonable being reviewable), and*
15 *shall remain in effect not more than two years. In the event*
16 *litigation is required to collect such remuneration, a higher*
17 *rate may be allowed by the court.*

18 **Chapter 5.—APPLICATIONS: FORM, WHO MAY FILE,**
19 **RELATING BACK, CONFIDENTIALITY**

20 **Sec. 51. Application for Recognition of Plant Variety**
21 **Rights.**

22 *(a) An application for a certificate of Plant Variety*
23 *Protection may be filed by the owner of the variety sought to*
24 *be protected. The application shall be made in writing to the*

1 *Secretary, shall be signed by or on behalf of the applicant,*
2 *and shall be accompanied by the prescribed fee.*

3 *(b) An error as to the naming of the breeder, without*
4 *deceptive intent, may be corrected at any time, in accordance*
5 *with ~~regulation~~ **regulations** established by the Secretary.*

6 **Sec. 52. Content of Application.**

7 *An application for a certificate recognizing plant variety*
8 *rights shall contain:*

9 *(1) The name of the variety except that a tempo-*
10 *rary designation will suffice until the certificate is to be*
11 *issued.*

12 *(2) A description of the variety setting forth its*
13 *novelty and a description of the genealogy and breeding*
14 *procedure, when known. The Secretary may require*
15 *amplification, including the submission of adequate pho-*
16 *tographs or drawings or plant specimens, if the descrip-*
17 *tion is not adequate or as complete as is reasonably pos-*
18 *sible, and submission of records or proof of ownership*
19 *or of allegations made in the application. An applicant*
20 *may add to or correct the description at any time, before*
21 *the certificate is issued, upon a showing acceptable to the*
22 *Secretary that the revised description is retroactively*
23 *accurate. Courts shall protect others from any injustice*
24 *which would result. The Secretary may accept records*

1 of the breeder and of any official seed certifying agency
2 in this country as evidence of stability where applicable.

3 (3) A declaration that a viable sample of basic seed
4 necessary for propagation of the variety will be deposited
5 and replenished periodically in a public repository in
6 accordance with regulations to be established hereunder.

7 This declaration may be added by amendment.

8 (4) A statement of the basis of applicant's owner-
9 ship.

10 **Sec. 53. Joint Breeders.**

11 (a) When two or more persons are the breeders, one
12 (or his successor) may apply, naming the others.

13 (b) The Secretary, after such notice as he may prescribe,
14 may issue a certificate of plant variety protection to the
15 applicant and such of the other breeders (or their successors
16 in interest) as may have subsequently joined in the
17 application.

18 **Sec. 54. Death or Incapacity of Breeder.**

19 Legal representatives of deceased breeders and of those
20 under legal incapacity may make application for plant vari-
21 ety protection upon compliance with the requirements and
22 on the same terms and conditions applicable to the breeder or
23 his successor in interest.

1 *Sec. 55. Benefit of Earlier Filing Date.*

2 (a) *An application for a certificate of plant variety*
3 *protection filed in this country based on the same variety,*
4 *and on rights derived from the same breeder, on which*
5 *there has previously been filed an application for plant*
6 *variety protection in a foreign country which affords similar*
7 *privileges in the case of applications filed in the United*
8 *States by ~~citizens~~ nationals of the United States, shall have*
9 *the same effect as the same application would have if filed in*
10 *the United States on the date on which the application for*
11 *plant variety protection for the same variety was first filed in*
12 *such foreign country, if the application in this country is*
13 *filed within twelve months from the earliest date on which*
14 *such foreign application was filed. No application shall be*
15 *entitled to a right of priority under this section, unless the*
16 *applicant designates the foreign application in his appli-*
17 *cation or by amendment thereto and, if required by the*
18 *Secretary, furnishes such copy, translation or both, as the*
19 *Secretary may specify.*

20 (b) *An application for a certificate of plant variety pro-*
21 *tection for the same variety as was the subject of an applica-*
22 *tion previously filed in the United States by or on behalf of*
23 *the same person, or by his predecessor in title, shall have the*
24 *same effect as to such variety as though filed on the date of*

1 the prior application if filed before the issuance of the certifi-
2 cate or other termination of proceedings on the first appli-
3 cation or on an application similarly entitled to the benefit of
4 the filing date of the first application and if it contains or is
5 amended to contain a specific reference to the earlier filed
6 application.

7 (c) A later application shall not by itself establish that
8 a characteristic newly described was in the variety at the
9 time of the earlier application.

10 **Sec. 56. Confidential Status of Application.**

11 Applications for plant variety protection and their con-
12 tents shall be kept in confidence by the Plant Variety Pro-
13 tection Office, by the Board, and by the offices in the Depart-
14 ment of Agriculture to which access may be given under regu-
15 lations. No information concerning the same shall be given
16 without the authority of the owner, unless necessary under
17 special circumstances as may be determined by the Secretary,
18 except that the Secretary may publish the variety names
19 designated in applications, stating the kind to which each
20 applies.

21 **Sec. 57. Publication.**

22 The Secretary may establish regulations for the publica-
23 tion of any pending application when publication is requested
24 by the owner.

1 Chapter 6.—EXAMINATION, RESPONSE TIME, INITIAL
2 APPEALS

3 Sec. 61. *Examination of Application.*

4 The Secretary shall cause an examination to be made of
5 the application and if on such examination it is determined
6 that the applicant is entitled to plant variety protection under
7 the law, the Secretary shall issue a notice of allowance of plant
8 variety protection therefor as hereinafter provided.

9 Sec. 62. *Notice of Refusal; Reconsideration.*

10 (a) Whenever an application is refused, or any objection
11 or requirement made by the examiner, the Secretary shall
12 notify the applicant thereof, stating the reasons therefor, to-
13 gether with such information and references as may be useful
14 in judging the propriety of continuing the prosecution of the
15 application; and if after receiving such notice the applicant
16 requests reconsideration, with or without amendment, the ap-
17 plication shall be reconsidered.

18 (b) For taking appropriate action after the mailing
19 to him of an action other than allowance, an applicant shall
20 be allowed six months, or such other time as the Secretary
21 in exceptional circumstances shall set in the refusal, or such
22 time as he may allow as an extension. Without such exten-
23 sion, action may be taken up to three months late by paying
24 an additional fee to be prescribed by the Secretary.

1 *Sec. 63. Initial Appeal.*

2 *When an application for plant variety protection has*
3 *been refused by the Plant Variety Protection Office, the ap-*
4 *plicant may appeal to the Secretary. The Secretary shall*
5 *seek the advice of the Plant Variety Protection Board on*
6 *all appeals, before deciding the appeal.*

7 *Chapter 7.—APPEALS TO COURTS AND OTHER*

8 *REVIEW*

9 *Sec. 71. Appeals.*

10 *From the decisions made under sections 44, 63, 91,*
11 *92, and 128 appeal may, within sixty days or such further*
12 *time as the Secretary allows, be taken under the Federal*
13 *Rules of Appellate Procedure. The Court of Customs and*
14 *Patent Appeals and United States Courts of Appeals shall*
15 *have jurisdiction, with venue in the case of the latter as stated*
16 *in 28 U.S.C. 2343.*

17 *Sec. 72. Civil Action Against Secretary.*

18 *An applicant dissatisfied with a decision under section 63*
19 *or 91 of this title, may, as an alternative to appeal, have*
20 *remedy by civil action against the Secretary in the United*
21 *States District Court for the District of Columbia. Such*
22 *action shall be commenced within sixty days after such deci-*
23 *sion or within such further time as the Secretary allows. The*
24 *court may, in the case of review of a decision by the Secre-*

1 *tary refusing plant variety protection, adjudge that such*
2 *applicant is entitled to receive a certificate of plant variety*
3 *protection for his variety as specified in his application as the*
4 *facts of the case may appear, on compliance with the require-*
5 *ments of this Act.*

6 **Sec. 73. Appeal or Civil Action in Contested Cases.**

7 *(a) A party to a proceeding under section 92 of this*
8 *title, dissatisfied with the decision, may take an appeal under*
9 *section 71 or may have remedy by civil action if commenced*
10 *within sixty days after such decision or within such further*
11 *time as the Secretary allows. A party contemplating appeal*
12 *as provided herein shall notify all adverse parties of his in-*
13 *tention and any such adverse party, not the Secretary, shall*
14 *have the right, by notice served within ten days of the notice*
15 *to him, to elect that any review shall be by civil action. In*
16 *such suits the record in the Plant Variety Protection Office*
17 *shall be admitted on motion of any party upon the terms*
18 *and conditions as to costs, expenses, and the further cross-*
19 *examination of witnesses, as the court imposes, without prej-*
20 *udice to the right of the parties to take further testimony.*
21 *The testimony and exhibits of the record in the Plant Variety*
22 *Protection Office when admitted shall have the same effect as*
23 *if originally taken and produced in the suit.*

24 *(b) Such suit may be instituted against the party in*
25 *interest as shown by the record of the Plant Variety Protec-*
26 *tion Office at the time of the decision complained of, but any*

1 party in interest may become a party to the action. If there
2 be adverse parties residing in a plurality of districts not em-
3 braced within the same State, or an adverse party residing
4 in a foreign country, the United States District Court for the
5 District of Columbia, or any United States district court to
6 which it may transfer the case, shall have jurisdiction and
7 may issue summons against the adverse parties directed to
8 the marshal of any district in which any adverse party
9 resides. Summons against adverse parties residing in foreign
10 countries may be served by publication or otherwise as the
11 court directs. The Secretary shall not be made a party but
12 he shall have the right to intervene. Judgment of the court
13 in favor of the right of an applicant to plant variety pro-
14 tection shall authorize the Secretary to issue a certificate of
15 plant variety protection on the filing in the Plant Variety
16 Protection Office of a certified copy of the judgment and on
17 compliance with the requirements of this Act.

18 **Chapter 8.—CERTIFICATES OF PLANT VARIETY**
19 **PROTECTION**

20 **Sec. 81. Plant Variety Protection.**

21 (a) If it appears that a certificate of plant variety pro-
22 tection should be issued on an application, a written notice of
23 allowance shall be given or mailed to the owner. The notice
24 shall specify the sum, constituting the issue fee, which shall be
25 paid within one month thereafter.

1 (b) Upon timely payment of this sum, and provided
2 that deposit of seed has been made in accordance with sec-
3 tion 52(3), the certificate of plant variety protection shall
4 issue.

5 (c) If any payment required by this section is not timely
6 made, but is submitted with an additional fee prescribed by
7 the Secretary within nine months after the due date or within
8 such further time as the Secretary may allow, it shall be
9 accepted.

10 **Sec. 82. How Issued.**

11 A certificate of plant variety protection shall be issued
12 in the name of the United States of America under the seal
13 of the Plant Variety Protection Office, and shall be signed
14 by the Secretary or have his signature placed thereon, and
15 shall be recorded in the Plant Variety Protection Office.

16 **Sec. 83. Contents and Term of Plant Variety Protection.**

17 (a) Every certificate of plant variety protection shall
18 certify that the breeder (or his successor in interest) his heirs
19 or assignees, has the right, during the term of the plant variety
20 protection, to exclude others from selling the variety, or offer-
21 ing it for sale, or reproducing it, or importing it, or exporting
22 it, or using it in producing (as distinguished from developing)
23 a hybrid or different variety therefrom, to the extent provided
24 by this Act. If the owner so elects, the certificate shall also

1 *specify that in the United States seed of the variety shall be*
2 *sold by variety name only as a class of certified seed and, if*
3 *specified, shall also conform to the number of generations des-*
4 *ignated by the owner. Any rights, or all rights except those*
5 *elected under the preceding sentence, may be waived; and*
6 *the certificate shall conform to such waiver. The Secretary*
7 *may at his discretion permit such election or waiver to be*
8 *made after certifying and amend the certificate accord-*
9 *ingly, without retroactive effect.*

10 *(b) The term of plant variety protection shall expire*
11 *seventeen years from the date of issue of the certificate in*
12 *the United States. If the certificate is not issued within*
13 *three years from the effective filing date, the Secretary may*
14 *shorten the term by the amount of delay in the prosecution*
15 *of the application attributed by the Secretary to the applicant.*

16 *(c) The term of plant variety protection shall also ex-*
17 *pire if the owner fails to comply with regulations, in force*
18 *at the time of certifying, relating to replenishing seed in*
19 *a public repository: Provided, however, That this expiration*
20 *shall not occur unless notice is mailed to the last owner*
21 *recorded as provided in section 101(d) and he fails, within*
22 *the time allowed thereafter, not less than three months, to*
23 *comply with said regulations, paying an additional fee to*
24 *be prescribed by the Secretary.*

1 *Sec. 84. Certificate of Correction of Plant Variety Protec-*
2 *tion Office Mistake.*

3 *Whenever a mistake in a certificate of plant variety*
4 *protection, incurred through the fault of the Plant Variety*
5 *Protection Office, is clearly disclosed by the records of the*
6 *Office, the Secretary may issue a certificate of correction*
7 *stating the fact and nature of such mistake, under seal,*
8 *without charge, to be recorded in the records of plant variety*
9 *protection. A copy thereof shall be attached to each copy of*
10 *the published specifications or certificate of plant variety*
11 *protection and such certificate of correction shall be considered*
12 *as part of the original certificate of plant variety protection.*
13 *Every such certificate of plant variety protection shall have*
14 *the same effect as if the same had been originally issued in*
15 *such corrected form. The Secretary may issue a corrected*
16 *certificate of plant variety protection without charge in lieu*
17 *of and with like effect as a certificate of correction.*

18 *Sec. 85. Certificate of Correction of Applicant's Mistake.*

19 *Whenever a mistake of a clerical or typographical na-*
20 *ture, or of minor character, or in the description of the*
21 *variety, which was not the fault of the Plant Variety Pro-*
22 *tection Office, appears in a certificate of plant variety pro-*
23 *tection and a showing has been made that such mistake oc-*
24 *curred in good faith, the Secretary may, upon payment of*
25 *the required fee, issue a certificate of correction in the manner*

1 and with attachment of copies as in section 84, if the correc-
2 tion unquestionably could have been made before the certifi-
3 cate issued. Such certificate of plant variety protection shall
4 have the same effect and operation in law on the trial of ac-
5 tions for causes thereafter arising as if the same had been
6 originally issued in such corrected form.

7 **Sec. 86. Correction of Named Breeder.**

8 *An error as to the naming of a breeder in the applica-*
9 *tion, without deceptive intent, shall not affect validity of plant*
10 *variety protection and may be corrected at any time by the*
11 *Secretary in accordance with regulations established by him*
12 *or upon order of a federal court before which the matter is*
13 *called in question. Upon such correction the Secretary shall*
14 *issue a certificate accordingly. Such correction shall not de-*
15 *prive any person of any rights he otherwise would have had.*

16 **Chapter 9.—REEXAMINATION AFTER ISSUE, AND**
17 **CONTESTED PROCEEDINGS**

18 **Sec. 91. Reexamination After Issue.**

19 *(a) Any person may, within five years after the issu-*
20 *ance of a certificate of plant variety protection, notify the*
21 *Secretary in writing of facts which may have a bearing on*
22 *the protectability of the variety, and the Secretary may cause*
23 *such plant variety protection to be reexamined in the light*
24 *thereof.*

25 *(b) Reexamination of plant variety protection under*

1 this section and appeals shall be pursuant to the same pro-
2 cedures and with the same rights as for original examina-
3 tions. Abandonment of the procedure while subject to a rul-
4 ing against the retention of the certificate shall result in can-
5 cellation of the plant variety certificate thereon and notice
6 thereof shall be endorsed on copies of the specification of the
7 protected plant variety thereafter distributed by the Plant
8 Variety Protection Office.

9 (c) If a person acting under subsection (a) makes a
10 prima facie showing of facts needing proof, the Secretary
11 may direct that the reexamination include such interparty
12 proceedings as he shall establish.

13 **Sec. 92. Priority Contest.**

14 (a) If the Secretary determines that two applications
15 of different applicants may be based on the same variety,
16 he may:

17 (1) Initiate a priority contest on his own motion
18 whether or not one of the applications may have been
19 certificated; or

20 (2) Issue a certificate on the application having the
21 earliest effective filing date, with notice to all; or

22 (3) Issue a certificate naming alternative owners,
23 under a single variety name acceptable to both.

24 (b) On request of any person when a certificate has
25 been issued naming another as an owner or alternative

1 owner, both having applied for protection on the same va-
2 riety, the Secretary shall institute a priority contest, except
3 that any person shall have forfeited his right to assert pri-
4 ority for the purpose of obtaining plant variety protection
5 when an adverse certificate has issued if he fails to make
6 the request within one year of the mailing of notice specified
7 in part (2) above or if he fails to make the request within
8 the period for taking action after refusal of his applica-
9 tion on the basis of the adverse certificate.

10 **Sec. 93. Effect of Adverse Final Judgment or of Non**
11 **Action.**

12 (a) A final judgment under section 92 adverse to an
13 application from which no appeal or other review had been
14 or can be taken or had shall constitute cancellation of any
15 certifying on that application, and notice thereof shall be
16 endorsed on copies of the specifications of the protected plant
17 variety thereafter distributed by the Plant Variety Protection
18 Office.

19 (b) Any person who has not proceeded in accordance
20 with the provision of this chapter shall not be foreclosed or
21 in any way prejudiced with respect to the defense of an
22 infringement suit or affirmative relief under declaratory judg-
23 ment proceedings.

24 (c) No person subject to an adverse decision in a pro-
25 ceeding under this chapter shall be foreclosed with respect to

1 (c) A certificate of acknowledgment under the hand
2 and official seal of a person authorized to administer oaths
3 within the United States, or in a foreign country, of a diplo-
4 matic or consular officer of the United States or an officer
5 authorized to administer oaths whose authority is proved by
6 a certificate of a diplomatic or consular officer of the United
7 States, shall be prima facie evidence of the execution of an
8 assignment, grant, license, or conveyance of plant variety
9 protection or application for plant variety protection.

10 (d) An assignment, grant, conveyance or license shall
11 be void as against any subsequent purchaser or mortgagee for
12 a valuable consideration, without notice, unless it, or an
13 acknowledgement thereof by the person giving such encum-
14 brance that there is such encumbrance, is filed for recording in
15 the Plant Variety Protection Office within one month from its
16 date or at least one month prior to the date of such subsequent
17 purchase or mortgage.

18 **Sec. 102. Ownership During Testing.**

19 An owner who, with notice that release is for testing only,
20 releases possession of seed or other sexually reproducible plant
21 material for testing retains ownership with respect thereto;
22 and any diversion from authorized testing, or any unauthor-
23 ized retention, of such material by anyone who has knowledge
24 that it is under such notice, or who is chargeable with notice,
25 is prohibited, and violates the property rights of the owner.

1 *Anyone receiving the material tagged or labeled with the*
2 *notice is chargeable with the notice. The owner is entitled to*
3 *remedy and redress in a civil action hereunder. No remedy*
4 *available by State or local law is hereby excluded. No such*
5 *notice shall be used, or if used be effective, when the owner*
6 *has made identical sexually reproducible plant material avail-*
7 *able to the public, as by sale thereof.*

8 **Chapter 11.—INFRINGEMENT OF PLANT VARIETY**
9 **PROTECTION**

10 **Sec. 111. Infringement of Plant Variety Protection.**

11 *Except as otherwise provided in this title, it shall be an*
12 *infringement of the rights of the owner of a novel variety to*
13 *perform without authority, any of the following acts in the*
14 *United States, or in commerce which can be regulated by*
15 *Congress or affecting such commerce, prior to expiration of*
16 *the right to plant variety protection but after either the issue*
17 *of the certificate or the distribution of a novel plant variety*
18 *with the notice under section 127:*

19 (1) *sell the novel variety, or offer it or expose it for*
20 *sale, deliver it, ship it, consign it, exchange it, or solicit*
21 *an offer to buy it, or any other transfer of title or pos-*
22 *session of it;*

23 (2) *import the novel variety into, or export it from,*
24 *the United States;*

(3) sexually multiply the novel variety as a step in marketing (for growing purposes) the variety; or

(4) use the novel variety in producing (as distinguished from developing) a hybrid or different variety therefrom; or

(5) use seed which had been marked "propagation prohibited" or progeny thereof to propagate the novel variety; or

(6) dispense the novel variety to another, in a form which can be propagated, without notice as to being a protected variety under which it was received; or

(7) perform any of the foregoing acts even in instances in which the novel variety is multiplied other than sexually, except in pursuance of a valid United States plant patent; or

(8) instigate or actively induce performance of any of the foregoing acts.

Sec. 112. Grandfather Clause.

Nothing in this Act shall abridge the right of any person, or his successor in interest, to reproduce or sell a variety developed and produced by such person more than one year prior to the effective filing date of an adverse application for a certificate of plant variety protection.

1 **Sec. 113. Right To Save Seed. Crop Exemption.**

2 *Except to the extent that such action may constitute an*
3 *infringement under subsections (3) and (4) of section 111,*
4 *it shall not infringe any right hereunder for a person to save*
5 *seed produced by him from seed obtained, or descended from*
6 *seed obtained, by authority of the owner of the variety for*
7 *seeding purposes and use such saved seed in the production of*
8 *a crop for use on his farm, or for sale as provided in this*
9 *section: Provided, That without regard to the provisions of*
10 *section 111(3) it shall not infringe any right hereunder for*
11 *a person, whose primary farming occupation is the growing*
12 *of crops for sale for other than reproductive purposes, to sell*
13 *such saved seed to other persons so engaged, for reproductive*
14 *purposes, provided such sale is in compliance with such State*
15 *laws governing the sale of seed as may be applicable. A bona*
16 *fide sale for other than reproductive purposes, made in chan-*
17 *nels usual for such other purposes, of seed produced on a*
18 *farm either from seed obtained by authority of the owner for*
19 *seeding purposes or from seed produced by descent on such*
20 *farm from seed obtained by authority of the owner for seed-*
21 *ing purposes shall not constitute an infringement. A pur-*
22 *chaser who diverts seed from such channels to seeding pur-*
23 *poses shall be deemed to have notice under section 127 that*
24 *his actions constitute an infringement.*

1 **Sec. 114. Research Exemption.**

2 *The use and reproduction of a protected variety for plant*
 3 *breeding or other bona fide research shall not constitute an*
 4 *infringement of the protection provided under this Act.*

5 **Sec. 115. Intermediary Exemption.**

6 *Transportation or delivery by a carrier in the ordinary*
 7 *course of its business as a carrier, or advertising by a person*
 8 *in the advertising business in the ordinary course of that busi-*
 9 *ness, shall not constitute an infringement of the protection*
 10 *provided under this Act.*

11 **Chapter 12.—REMEDIES FOR INFRINGEMENT OF**
 12 **PLANT VARIETY PROTECTION, AND OTHER**
 13 **ACTIONS**

14 **Sec. 121. Remedy for Infringement of Plant Variety Pro-**
 15 **tection.**

16 *An owner shall have remedy by civil action for in-*
 17 *fringement of his plant variety protection under section 111.*
 18 *If a variety is sold under the name of a variety shown in*
 19 *a certificate, there is a prima facie presumption that it is*
 20 *the same variety.*

21 **Sec. 122. Presumption of Validity; Defenses.**

22 *(a) Certificates of plant variety protection shall be pre-*
 23 *sumed valid. The burden of establishing invalidity of a plant*
 24 *variety protection shall rest on the party asserting invalidity.*

1 (b) The following shall be defenses in any action charg-
2 ing infringement and shall be pleaded: (1) noninfringement,
3 absence of liability for infringement, or unenforceability; (2)
4 invalidity of the plant variety protection in suit on any
5 ground specified in section 42 of this title as a condition for
6 protectability; (3) invalidity of the plant variety protection
7 in suit for failure to comply with any requirement of section
8 52; (4) that the asserted infringement was performed un-
9 der an existing certificate adverse to that asserted and prior
10 to notice of the infringement; and (5) any other fact or
11 act made a defense by this Act.

12 **Sec. 123. Injunction.**

13 The several courts having jurisdiction of cases under this
14 title may grant injunctions in accordance with the principles
15 of equity to prevent the violation of any right hereunder on
16 such terms as the court deems reasonable.

17 **Sec. 124. Damages.**

18 (a) Upon finding an infringement the court shall award
19 damages adequate to compensate for the infringement but in
20 no event less than a reasonable royalty for the use made
21 of the variety by the infringer, together with interest and
22 costs as fixed by the court.

23 (b) When the damages are not determined by the jury,
24 the court shall determine them. In either event the court may

1 increase the damages up to three times the amount deter-
2 mined.

3 (c) The court may receive expert testimony as an aid
4 to the determination of damages or of what royalty would
5 be reasonable under the circumstances.

6 (d) As to infringement prior to, or resulting from a
7 planting prior to, issuance of a certificate for the infringed
8 variety, a court finding the infringer to have established
9 innocent intentions, shall have discretion as to awarding
10 damages.

11 **Sec. 125. Attorney Fees.**

12 The court in exceptional cases may award reasonable
13 attorney fees to the prevailing party.

14 **Sec. 126. Time Limitation on Damages.**

15 (a) No recovery shall be had for that part of any in-
16 fringement committed more than six years (or known to
17 the owner more than one year) prior to the filing of the
18 complaint or counterclaim for infringement in the action.

19 (b) In the case of claims against the United States
20 Government for unauthorized use of a protected variety, the
21 period between the date of receipt of written claim for com-
22 pensation by the department or agency of the Government
23 having authority to settle such claim, and the date of mail-
24 ing by the Government of a notice to the claimant that his

1 *claim has been denied shall not be counted as part of the*
2 *period referred to in the preceding paragraph.*

3 **Sec. 127. Limitation of Damages; Marking and Notice.**

4 *Owners may give notice to the public by physically*
5 *associating with or affixing to the container of seed of a novel*
6 *variety or by fixing to the novel variety, a label containing the*
7 *words "Propagation Prohibited" and after the certificate*
8 *issues, such additional words as "U.S. Protected Variety".*
9 *In the event the novel variety is distributed by authorization*
10 *of the owner and is received by the infringer without such*
11 *marking, no damages shall be recovered against such in-*
12 *fringer by the owner in any action for infringement, unless*
13 *the infringer has actual notice or knowledge that propaga-*
14 *tion is prohibited or that the variety is a protected variety, in*
15 *which event damages may be recovered only for infringe-*
16 *ment occurring after such notice. As to both damages and in-*
17 *junction, a court shall have discretion to be lenient as to dis-*
18 *posal of materials acquired in good faith by acts prior to such*
19 *notice.*

20 **Sec. 128. False Marking; Cease and Desist Orders.**

21 *(a) Each of the following acts, if performed in connec-*
22 *tion with the sale, offering for sale, or advertising of sexually*
23 *reproducible plant material, is prohibited, and the Secretary*
24 *may, if he determines after an opportunity for hearing that*
25 *the act is being so performed, issue an order to cease and*

1 *desist, said order being binding unless appealed under*
2 *section 71:*

3 (1) *Use of the words "U.S. Protected Variety"*
4 *or any word or number importing that the material is*
5 *a variety protected under certificate, when it is not.*

6 (2) *Use of any wording importing that the ma-*
7 *terial is a variety for which an application for plant*
8 *variety protection is pending, when it is not.*

9 (3) *Use of the phrase "propagation prohibited" or*
10 *similar phrase without reasonable basis, a statement of*
11 *this basis being promptly filed with the Secretary if the*
12 *phrase is used beyond testing and no application has been*
13 *filed. Any reasonable basis expires one year after the first*
14 *sale of the variety except as justified thereafter by a pend-*
15 *ing application or a certificate still in force.*

16 (b) *Anyone convicted of violating a binding cease and*
17 *desist order, or of performing any act prohibited in sub-*
18 *section (a) of this section for the purpose of deceiving the*
19 *public, shall be fined not more than \$10,000 and not less*
20 *than \$500.*

21 (c) *Anyone whose business is damaged or is likely to*
22 *be damaged by an act prohibited in subsection (a) of this*
23 *section, or is subjected to competition in connection with*
24 *which such act is performed, may have remedy by civil*
25 *action.*

1 *Sec. 129. Nonresident Proprietors; Service and Notice.*

2 *Every owner not residing in the United States may file*
3 *in the Plant Variety Protection Office a written designation*
4 *stating the name and address of a person residing within*
5 *the United States on whom may be served process or*
6 *notice of proceedings affecting the plant variety protection*
7 *or rights thereunder. If the person designated cannot be found*
8 *at the address given in the last designation, or if no person*
9 *has been designated, the United States District Court for*
10 *the District of Columbia shall have jurisdiction and sum-*
11 *mons shall be served by publication or otherwise as the court*
12 *directs. The court shall have the same jurisdiction to take*
13 *any action respecting the plant variety protection, or rights*
14 *thereunder that it would have if the owner were personally*
15 *within the jurisdiction of the court.*

16 *Chapter 13.—INTENT AND SEVERABILITY*

17 *Sec. 131. Intent.*

18 *It is the intent of Congress to provide the indicated*
19 *protection for new varieties by exercise of any constitutional*
20 *power needed for that end, so as to afford adequate encour-*
21 *agement for research, and for marketing when appropriate,*
22 *to yield for the public the benefits of new varieties. Consti-*
23 *tutional clauses 3 and 8 of article I, section 8 are both relied*
24 *upon.*

1 *Sec. 132. Severability.*

2 *If this Act is held unconstitutional as to some provisions*
 3 *or circumstances, it shall remain in force as to the ~~remainder~~*
 4 **remaining provisions** *and other circumstances.*

5 **Chapter 14.—TEMPORARY PROVISION AND RELATED**
 6 **ENACTMENTS; EXEMPTED PLANTS; MISCEL-**
 7 **LANEOUS**

7 *Sec. 141. Effective Date.*

8 *This Act shall take effect upon enactment. Applications*
 9 *may be filed with the Secretary and held by him until the*
 10 *Office of Plant Variety Protection is organized and in oper-*
 11 *ation.*

12 *Sec. 142. Amendment of Federal Seed Act.*

13 *The Federal Seed Act (53 Stat. 1275) is amended as*
 14 *follows:*

15 *(a) By adding at the end thereof:*

16 **“TITLE V—SALE OF UNCERTIFIED SEED OF**
 17 **PROTECTED VARIETY**

18 **“Section 501.**

19 *“(a) It shall be unlawful in the United States or in in-*
 20 *terstate or foreign commerce to sell by variety name seed not*
 21 *certified by an official seed certifying agency when it is a*
 22 *variety for which a certificate of plant variety protection*
 23 *under the Plant Variety Protection Act specifies sale only*
 24 *as a class of certified seed: Provided, That seed from a certi-*

1 *fied lot may be labeled as to variety name when used in a mix-*
 2 *ture by, or with the approval of, the owner of the variety."*

3 *(b) By adding at the end of section 102 the following*
 4 *wording: "Seed of a variety for which a certificate of plant*
 5 *variety protection under the Plant Variety Protection Act*
 6 *specifies sale only as a class of certified seed shall be certified*
 7 *only when*

8 *"(1) the basic seed from which the variety was pro-*
 9 *duced was furnished by authority of the owner of the*
 10 *variety if the certification is made during the term of*
 11 *protection, and*

12 *"(2) it conforms to the number of generations desig-*
 13 *nated by the certificate, if the certificate contains such a*
 14 *designation."*

15 ***Sec. 143. Amendment of Judicial Code.***

16 *Title 28 of the United States Code, entitled Judicial*
 17 *Code and Judiciary, is amended as follows:*

18 *(a) After section 1544 add:*

19 ***"Sec. 1545. Decision of the Plant Variety Protection Office.***

20 *"The Court of Customs and Patent Appeals shall have*
 21 *nonexclusive jurisdiction of appeals under section 71 of*
 22 *the Plant Variety Protection Act."*

23 *(b) In section 1338 after "Patents" in the heading,*
 24 *after "patents" and after "patent" (both occurrences) insert*
 25 *", plant variety protection".*

1 (c) *After section 2351 add:*

2353. *The Court of appeals has nonexclusive jurisdiction to hear appeals
under section 71 of the Plant Variety Protection Act.*

2 **Sec. 144. Exempted Plants.**

3 The provisions of this Act shall not apply to the
4 seeds, plants, or transplants of okra, celery, peppers,
5 tomatoes, carrots, and cucumbers.

6 ~~Sec. 144.~~ **Sec. 145. Short Title.**

7 *This Act may be cited as the "Plant Variety Protection*
8 *Act."*

91ST CONGRESS
2^D Session

S. 3070

[Report No. 91-1138]
[Report No. 91-1246]

A BILL

To encourage the development of novel varieties of sexually reproduced plants and to make them available to the public, providing protection available to those who breed, develop, or discover them, and thereby promoting progress in agriculture in the public interest.

By Mr. MILLER, Mr. DOLE, Mr. EASTLAND, Mr. HOLLINGS, Mr. JORDAN of North Carolina, and Mr. YOUNG of North Dakota.

OCTOBER 23, 1969

Read twice and referred to the Committee on Agriculture and Forestry

AUGUST 21 (legislative day, AUGUST 20), 1970
Reported with an amendment

AUGUST 24, 1970

Referred to the Committee on the Judiciary

SEPTEMBER 29, 1970
Reported with amendments

DIGEST of Congressional Proceedings

OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

OFFICE OF BUDGET AND FINANCE
(FOR INFORMATION ONLY;
NOT TO BE QUOTED OR CITED)

For actions of October 2, 1970
91st-2nd; No.173

CONTENTS

Adjournment.....4	Federal highways.....2	Public buildings.....5
Federal aid highway amendments of 1970.....2	National Lakeshore.....3	Sleeping Bear Dunes National Lakeshore.....3
	Novel plants.....1	

HIGHLIGHTS: Senate passed the Novel Plant Varieties bill.

SENATE

1. NOVEL PLANTS. Passed with Committee amendments S. 3070, to encourage the development of novel varieties of plants and to make protection available to their developers. pp. S16972-83
2. FEDERAL HIGHWAYS. Passed with amendments S. 4418, proposed Federal-Aid Highway Amendments of 1970. pp. S17025-50

3. NATIONAL LAKESHORE. Committee on Interior and Insular Affairs reported H.R. 18776 to establish the Sleeping Bear Dunes National Lakeshore, in the state of Michigan (S. Rept. No. 91-1263). p. S16993
4. ADJOURNED until October 5, 1970.

BILL INTRODUCED

5. PUBLIC BUILDINGS. S. 4426, by Sen. McClellan, to amend the act of June 1, 1948, to increase the jurisdiction and policing power of General Services Administration special policemen, to increase the penalties for violations of rules and regulations promulgated thereunder by the General Services Administration for the protection of public buildings, and to prohibit certain conduct in or near offices of the Government; to the Committee on Government Operations. Remarks of author, pp. S16993-5

-0-

COMMITTEE HEARINGS ANNOUNCEMENTS:

- OCT. 5: Environmental health, S. Select Committee on Nutrition and Human Needs
Farm bill, Conferees (exec.)
Rivers, harbors, and flood control, H. Public Works
- OCT. 7: S. Agriculture (exec.)

-oOo-



United States
of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 91st CONGRESS, SECOND SESSION

Vol. 116

WASHINGTON, FRIDAY, OCTOBER 2, 1970

No. 173

House of Representatives

The House was not in session today. Its next meeting will be held on Monday, October 5, 1970, at 12 o'clock noon.

Senate

FRIDAY, OCTOBER 2, 1970

The Senate met at 10 a.m. and was called to order by Hon. JAMES B. ALLEN, a Senator from the State of Alabama.

The Chaplain, the Reverend Edward L. R. Elson, D.D., offered the following prayer:

O God whose love is boundless and whose grace is sufficient for all our need, bring our spirits in harmony with Thy spirit. Be Thou the strength and guide of every Member of this body. Grant to each one here fidelity to the truth, perseverance in the right, and submission to Thy will. Strengthen those who serve the Senators in ways great and small, anoint us all with the spirit of servanthood, and bind us together in a warm comradeship of heart and mind for the completion of the work before us.

Be with us at the end of the day, O Lord, that we may hear Thee say, "Well done, good and faithful servant." Watch over us in our separation and bring us back safely in newness of life.

In the name of Him whose name is above every name. Amen.

DESIGNATION OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication from the President pro tempore of the Senate (Mr. RUSSELL).

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., October 2, 1970.

To the Senate:

Being temporarily absent from the Senate, I appoint Hon. JAMES B. ALLEN, a Senator from the State of Alabama, to perform the duties of the Chair during my absence.

RICHARD B. RUSSELL,
President pro tempore.

Mr. ALLEN thereupon took the chair as Acting President pro tempore.

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Thursday, October 1, 1970, be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

COMMITTEE MEETINGS DURING SENATE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Subcommittee on the Status of Forces of the Committee on Armed Forces, the Committee on Foreign Relations, and the Committee on Finance all be authorized to meet during the session of the Senate today.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

EXECUTIVE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate go into executive session to consider nominations on the Executive Calendar.

There being no objection, the Senate proceeded to the consideration of executive business.

The ACTING PRESIDENT pro tempore. The nominations on the Executive Calendar will be stated.

DEPARTMENT OF DEFENSE

The assistant legislative clerk read the nomination of Richard J. Borda, of California, to be an Assistant Secretary of the Air Force.

The ACTING PRESIDENT pro tempore. Without objection, the nomination is considered and confirmed.

OFFICE OF TELECOMMUNICATIONS POLICY

The assistant legislative clerk read the nomination of George Frank Mansur, Jr., of Texas, to be a Deputy Director of the Office of Telecommunications Policy.

The ACTING PRESIDENT pro tempore. Without objection, the nomination is considered and confirmed.

DEPARTMENT OF TRANSPORTATION

The assistant legislative clerk read the nomination of Willard J. Smith, of Michigan, to be an Assistant Secretary of Transportation.

The ACTING PRESIDENT pro tempore. Without objection, the nomination is considered and confirmed.

NOMINATIONS PLACED ON THE SECRETARY'S DESK—IN THE COAST GUARD

The assistant legislative clerk proceeded to read sundry nominations in the Coast Guard which had been placed on the Secretary's desk.

The ACTING PRESIDENT pro tempore. Without objection, the nominations are considered and confirmed en bloc.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the President be immediately notified of the confirmation of these nominations.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

LEGISLATIVE SESSION

Mr. MANSFIELD. Mr. President, I move that the Senate resume the consideration of legislative business.

The motion was agreed to, and the Senate resumed the consideration of legislative business.

S 16971

PLANT VARIETY PROTECTION ACT

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 1265, S. 3070, an unobjected-to item on the calendar.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The Senate proceeded to consider the bill (S. 3070) to encourage the development of novel varieties of sexually reproduced plants and to make them available to the public, providing protection available to those who breed, develop, or discover them, and thereby promoting progress in agriculture in the public interest, which had been reported from the Committee on Agriculture and Forestry, with an amendment; and reported from the Committee on the Judiciary, with amendments. The amendment of the Committee on Agriculture and Forestry was to strike out all after the enacting clause and insert:

INDEX

	Section
TITLE I—Plant Variety Protection Office	1
TITLE II—Protectability of Plant Varieties and Certificates of Protection	41
TITLE III—Plant Variety Protection and Rights	101
TITLE I—PLANT VARIETY PROTECTION OFFICE	

Chapter	Section
1. Organization and Publications	1
2. Legal Provisions as to the Plant Variety Protection Office	21
3. Plant Variety Protection Fees	31

Chapter 1.—ORGANIZATION AND PUBLICATIONS

Section 1. Establishment.

There is hereby established in the Department of Agriculture a bureau to be known as the Plant Variety Protection Office, which shall have the functions set forth in this Act.

Sec. 2. Seal.

The Plant Variety Protection Office shall have a seal with which documents and certificates evidencing plant variety protection shall be authenticated.

Sec. 3. Organization.

The organization of the Plant Variety Protection Office shall, except as provided herein, be determined by the Secretary of Agriculture (hereinafter called the Secretary). The office shall devote itself substantially exclusively to the administration of this Act.

Sec. 4. Restrictions on Employees as to Interest in Plant Variety Protection.

Employees of the Plant Variety Protection Office shall be ineligible during the periods of their employment, to apply for plant variety protection and to acquire directly or indirectly except by inheritance or bequest, any right or interest in any matters before that office. This section shall not apply to members of the Plant Variety Protection Board who are not otherwise employees of the Plant Variety Protection Office.

Sec. 5. Bond of Employees.

Such employees as the Secretary designates, before entering upon their duties, shall severally give bond, with sureties, in sums prescribed by the Secretary, conditioned for the faithful discharge of their respective duties and that they shall render to the proper officers of the Treasury a true account of all money received by virtue of their offices.

Sec. 6. Regulations.

The Secretary may establish regulations, not inconsistent with law, for the conduct of proceedings in the Plant Variety Protection Office after consultations with the Plant Variety Protection Board.

Sec. 7. Plant Variety Protection Board.

(a) APPOINTMENT.—The Secretary shall appoint a Plant Variety Protection Board. The Board shall consist of individuals who are experts in various areas of varietal development covered by this Act. Membership of the Board shall include farmer representation and shall be drawn approximately equally from the private or seed industry sector and from the sector of government or the public. The Secretary or his designee shall act as chairman of the Board without voting rights except in the case of ties.

(b) FUNCTIONS OF BOARD.—The functions of the Plant Variety Protection Board shall include:

(1) Advising the Secretary concerning the adoption of Rules and Regulations to facilitate the proper administration of this Act;

(2) Making advisory decisions on all appeals from the examiner. The Board shall determine whether to act as a full Board or by panels it selects; and whether to review advisory decisions made by a panel. For service on such appeals, the Board may select, as temporary members, experts in the area to which the particular appeal relates; and

(3) Advising the Secretary on all questions under section 44.

(c) COMPENSATION OF BOARD.—The members of the Plant Variety Protection Board shall serve without compensation except for standard government reimbursable expenses.

Sec. 8. Library.

The Secretary shall maintain a library of scientific and other works and periodicals, both foreign and domestic, in the Plant Variety Protection Office to aid the officers in the discharge of their duties.

Sec. 9. Register of Protected Plant Varieties.

The Secretary shall maintain a register of published specifications of United States protected plant varieties and a file of such other scientific and technical information as may be necessary or practicable.

Sec. 10. Publications.

(a) The Secretary may publish, or cause to be published, in such format as he shall determine to be suitable, the following:

(1) The specifications for plant variety protection including drawings and photographs.

(2) The Official Journal of the Plant Variety Protection Office, including annual indices.

(3) Pamphlet copies of the plant variety protection laws and rules of practice and circulars or other publications relating to the business of the Office.

(b) The Plant Variety Protection Office may print the heading of the drawings or photographs for protected plant varieties for the purpose of photolithography and may provide suitable copy for any lithography to appear on the same page.

(c) The Secretary may (1) establish public facilities for the searching of plant variety protection records and materials, and (2) from time to time, as through an information service, disseminate to the public those portions of the technological and other public information available to or within the Plant Variety Protection Office to encourage innovation and promote the progress of the useful arts.

(d) The Secretary may exchange any of the publications specified for publications desirable for the use of the Plant Variety Protection Office. The Secretary may exchange

copies of specifications, drawings, and photographs of United States protected plant varieties for copies of specifications, drawings, and photographs of applications and protected plant varieties of foreign countries.

Sec. 11. Copies for Public Libraries.

The Secretary may supply printed copies of specifications, drawings, and photographs of protected plant varieties to public libraries in the United States which shall maintain such copies for the use of the public.

Chapter 2.—LEGAL PROVISIONS AS TO THE PLANT VARIETY PROTECTION OFFICE

Sec. 21. Day for Taking Action Falling on Saturday, Sunday, or Holiday.

When the day, or the last day, for taking any action or paying any fee in the United States Plant Variety Protection Office falls on Saturday, Sunday, a holiday within the District of Columbia, or on any other day the Plant Variety Protection Office is closed for the receipt of papers, the action may be taken or the fee paid, on the next succeeding business day.

Sec. 22. Form of Papers Filed.

The Secretary may by regulations prescribe the form of papers to be filed in the Plant Variety Protection Office.

Sec. 23. Testimony in Plant Variety Protection Office Cases.

The Secretary may establish regulations for taking affidavits, depositions, and other evidence required in cases before the Plant Variety Protection Office. Any officer authorized by law to take depositions to be used in the court of the United States, or of the State where he resides, may take such affidavits and depositions, and swear the witnesses. If any person acts as a hearing officer by authority of the Secretary, he shall have like power.

Sec. 24. Subpenas, Witnesses.

(a) The clerk of any United States court for the district wherein testimony is to be taken in accordance with regulations established by the Secretary for use in any contested case in the Plant Variety Protection Office shall, upon the application of any party thereof, issue a subpoena for any witness residing or being within such district or within one hundred miles of the stated place in such district, commanding him to appear and testify before an officer in such district authorized to take depositions and affidavits, at the time and place stated in the subpoena. The provisions of the Federal Rules of Civil Procedure relating to the attendance of witnesses and the production of documents and things shall apply to contested cases in the Plant Variety Protection Office insofar as consistent with such regulations.

(b) Every witness subpoenaed or testifying shall be allowed the fees and traveling expenses allowed to witnesses attending the United States district courts.

(c) A judge of a court whose clerk issued a subpoena may enforce obedience to the process or punish disobedience as in other like cases, on proof that a witness, served with such subpoena, neglected or refused to appear or to testify. No witness shall be deemed guilty of contempt for disobeying such subpoena unless his fees and traveling expenses in going to, and returning from, one day's attendance at the place of examination, are paid or tendered him at the time of the service of the subpoena; nor for refusing to disclose any secret matter except upon appropriate order of the court which issued the subpoena or of the Secretary.

Sec. 25. Effect of Defective Execution.

Any document to be filed in the Plant Variety Protection Office and which is required by any law or regulation to be executed in a specified manner may be provisionally accepted by the Secretary despite a defective

execution, provided a properly executed document is submitted within such time as may be prescribed.

Sec. 26. Regulations for Practice Before the Office.

The Secretary shall prescribe regulations governing the admission to practice and conduct of persons representing applicants or other parties before the Plant Variety Protection Office. The Secretary may, after notice and opportunity for a hearing, suspend or exclude, either generally or in any particular case, from further practice before the Office of Plant Variety Protection any person shown to be incompetent or disreputable or guilty of gross misconduct.

Sec. 27. Unauthorized Practice.

Anyone who in the United States engages in direct or indirect practice before the Office of Plant Variety Protection while suspended or excluded under section 26, or without being admitted to practice before the Office, shall be liable in a civil action for the return of all money received, and for compensation for damage done by such person and also may be enjoined from such practice. However, there shall be no liability for damage if such person establishes that the work was done competently and without negligence. This section does not apply to anyone who, without a claim of self-sufficiency, works under the supervision of another who stands admitted and is the responsible party; nor to anyone who establishes that he acted only on behalf of any employer by whom he was regularly employed.

Chapter 3.—PLANT VARIETY PROTECTION FEES

Sec. 31. Plant Variety Protection Fees; Appropriations.

The Secretary shall, under such regulations as he may prescribe, charge and collect reasonable fees for services performed under this Act. The fees authorized by this section shall be established to substantially cover the costs or administration of this Act. Such fees shall be deposited into a fund to be available, without fiscal year limitation, for the administration of this Act. The initial capital of the fund shall consist of appropriations, which are hereby authorized to be made. Until such time as the Secretary prescribes fees as provided by this section, a fee of \$50 shall be charged for filing each application, subject to such adjustment as may be appropriate after fees are prescribed by the Secretary hereunder.

Sec. 32. Payment of Plant Variety Protection Fees; Return of Excess Amounts.

All fees shall be paid to the Secretary, and the Secretary may refund any sum paid by mistake or in excess of the fee required.

TITLE II—PROTECTABILITY OF PLANT VARIETIES AND CERTIFICATES OF PROTECTION

Chapter	Section
4. Protection of Plant Varieties.....	41
5. Applications: Form, Who May File, Relating Back, Confidentiality....	51
6. Examination: Response Time, Initial Appeals.....	61
7. Appeals to Courts and Other Review.....	71
8. Certificates of Plant Variety Protection	81
9. Reexamination After Issue, and Contested Proceedings.....	91

Chapter 4.—PROTECTABILITY OF PLANT VARIETIES

Sec. 41. Definitions and Rules of Construction.

The definitions and rules of construction set forth in this section apply for the purposes of this Act.

(a) The term "novel variety" may be represented by, without limitation, seed, transplants, and plants, and is satisfied if there is:

(1) Distinctness in the sense that the variety clearly differs by one or more identifiable morphological, physiological or other characteristics (which may include those evidenced by processing or product characteristics, for example, milling and baking characteristics in the case of wheat) as to which a difference in genealogy may contribute evidence, from all prior varieties of public knowledge at the date of determination within the provisions of section 42; and

(2) Uniformity in the sense that any variations are describable, predictable, and commercially acceptable; and

(3) Stability in the sense that the variety, when sexually reproduced or reconstituted, will remain unchanged with regard to its essential and distinctive characteristics with a reasonable degree of reliability commensurate with that of varieties of the same category in which the same breeding method is employed.

(b) The terms "United States" and "this country" mean the United States of America, its territories and possessions, and the Commonwealth of Puerto Rico.

(c) The term "kind" means one or more related species or subspecies singly or collectively known by one common name, for example, soybean, flax, carrot, or radish.

(d) The term "date of determination" means the date when there has been at least tentative determination that the variety has been sexually reproduced with recognized characteristics, whether or not the novelty of those characteristics has been determined.

(e) The term "breeder" shall mean the person who—

(1) directs the final breeding creating the novel variety, or

(2) discovers the novel variety, and makes the tentative determination described in subsection (d).—Where such actions are conducted by an agent on behalf of his principal, the principal, rather than the agent, shall be considered the breeder. The terms "breed", "develop", "originate", and "discover", and derivatives thereof shall each include the other.

(f) The term "sexually reproduced" shall include any production of a variety by seed.

(g) The term "basic seed" means the seed planted to produce certified or commercial seed.

(h) The term "testing" means testing or experimental use of a variety before any sale thereof. Sale for other than seed purposes of seed or other plant material produced as the result of testing shall not constitute a sale for the purpose of the preceding sentence or for the purpose of the following subsection.

(i) The term "public variety" means a variety sold or used in this country, or existing in and publicly known in this country; but use for the purpose of testing, or sale, or use as individual plants not known to be sexually reproducible, shall not make the variety a public variety.

(j) A variety described in a publication as specified in section 42(a)(1)(B) is "effectively available to workers in this country" if a source from which it can be purchased as indicated in such publication or readily determinable or if such publication teaches how to produce the variety from source-material effectively available to workers in this country.

Sec 42. Right to Plant Variety Protection; Plant Varieties Protectable.

(a) The breeder of any novel variety of sexually reproduced plant (other than fungi, bacteria, or first generation hybrids) who has so reproduced the variety, or his successor in interest, shall be entitled to plant variety protection therefor, subject to the conditions and requirements of this title unless one of the following bars exists:

(1) Before the date of determination thereof by the breeder, or more than one year before the effective filing date of the application therefor, the variety was (A)

a public variety in this country, or (B) effectively available to workers in this country and adequately described by a publication reasonably deemed a part of the public technical knowledge in this country which description must include a disclosure of the principal characteristics by which the variety is distinguished.

(2) An application for protection of the variety based on the same breeder's acts, was filed in a foreign country by the owner or his privies more than one year before the effective filing date of the application filed in the United States.

[(3) Another is entitled to an earlier date of determina-]

(3) Another is entitled to an earlier date of determination for the same variety and such other (A) has a certificate of plant variety protection hereunder or (B) has been engaged in a continuing program of development and testing to commercialization, or (C) has within six months after such earlier date of determination adequately described the variety by a publication reasonably deemed a part of the public technical knowledge in this country which description must include a disclosure of the principal characteristics by which the variety is distinguished.

(b) The Secretary may, by regulation, extend for a reasonable period of time the one year time period provided in subsection (c) for filing applications, and may in that event provide for at least commensurate reduction of the term of protection.

Sec. 43. Reciprocity Limits.

Protection under the Act may, by regulation, be limited to nationals of the United States, except where this limitation would violate a treaty and except that nationals of a foreign state in which they are domiciled shall be entitled to so much of the protection here afforded as is afforded by said foreign state to nationals of the United States for the same genus and species.

Sec. 44. Public Interest in Wide Usage.

The Secretary may declare a protected variety open to use on a basis of equitable remuneration to the owner, not less than a reasonable royalty, when he determines that such declaration is necessary in order to insure an adequate supply of fiber, food, or feed in this country and that the owner is unwilling or unable to supply the public needs for the variety at a price which may reasonably be deemed fair. Such declaration may be, with or without limitation, with or without designation of what the remuneration is to be; and shall be subject to review as under section 71 or 72 (any finding that the price is not reasonable being reviewable), and shall remain in effect not more than two years. In the event litigation is required to collect such remuneration, a higher rate may be allowed by the court.

Chapter 5.—APPLICATIONS: FORM, WHO MAY FILE, RELATING BACK, CONFIDENTIALITY

Sec. 51. Application for Recognition of Plant Variety Rights.

(a) An application for a certificate of Plant Variety Protection may be filed by the owner of the variety sought to be protected. The application shall be made in writing to the Secretary, shall be signed by or on behalf of the applicant, and shall be accompanied by the prescribed fee.

(b) An error as to the naming of the breeder, without deceptive intent, may be corrected at any time, in accordance with regulation established by the Secretary.

Sec. 52. Content of Application.

An application for a certificate recognizing plant variety rights shall contain:

(1) The name of the variety except that a temporary designation will suffice until the certificate is to be issued.

(2) A description of the variety setting

forth its novelty and a description of the genealogy and breeding procedure, when known. The Secretary may require amplification, including the submission of adequate photographs or drawings or plant specimens, if the description is not adequate or as complete as is reasonably possible, and submission of records or proof of ownership or of allegations made in the application. An applicant may add to or correct the description at any time, before the certificate is issued, upon a showing acceptable to the Secretary that the revised description is retroactively accurate. Courts shall protect others from any injustice which would result. The Secretary may accept records of the breeder and of any official seed certifying agency in this country as evidence of stability where applicable.

(3) A declaration that a viable sample of basic seed necessary for propagation of the variety will be deposited and replenished periodically in a public repository in accordance with regulations to be established hereunder. This declaration may be added by amendment.

(4) A statement of the basis of applicant's ownership.

Sec. 53. Joint Breeders.

(a) When two or more persons are the breeders, one (or his successor) may apply, naming the others.

(b) The Secretary, after such notice as he may prescribe, may issue a certificate of plant variety protection to the applicant and such of the other breeders (or their successors in interest) as may have subsequently joined in the application.

Sec. 54. Death or Incapacity of Breeder.

Legal representatives of deceased breeders and of those under legal incapacity may make application for plant variety protection upon compliance with the requirements and on the same terms and conditions applicable to the breeder or his successor in interest.

Sec. 55. Benefit of Earlier Filing Date.

(a) An application for a certificate of plant variety protection filed in this country based on the same variety, and on rights derived from the same breeder, on which there has previously been filed an application for plant variety protection in a foreign country which affords similar privileges in the case of applications filed in the United States by citizens of the United States, shall have the same effect as the same application would have if filed in the United States on the date on which the application for plant variety protection for the same variety was first filed in such foreign country, if the application in this country is filed within twelve months from the earliest date on which such foreign application was filed. No application shall be entitled to a right of priority under this section, unless the applicant designates the foreign application in his application or by amendment thereto and, if required by the Secretary, furnishes such copy, translation or both, as the Secretary may specify.

(b) An application for a certificate of plant variety protection for the same variety as was the subject of an application previously filed in the United States by or on behalf of the same person, or by his predecessor in title, shall have the same effect as to such variety as though filed on the date of the prior application if filed before the issuance of the certificate or other termination of proceedings on the first application or on an application similarly entitled to the benefit of the filing date of the first application and if it contains or is amended to contain a specific reference to the earlier filed application.

(c) A later application shall not by itself establish that a characteristic newly described was in the variety at the time of the earlier application.

Sec. 56. Confidential Status of Application.

Applications for plant variety protection and their contents shall be kept in confidence by the Plant Variety Protection Office, by the Board, and by the offices in the Department of Agriculture to which access may be given under regulations. No information concerning the same shall be given without the authority of the owner, unless necessary under special circumstances as may be determined by the Secretary, except that the Secretary may publish the variety names designated in applications, stating the kind of which each applies.

Sec. 57. Publication.

The Secretary may establish regulations for the publication of any pending application when publication is requested by the owner.

Chapter 6.—EXAMINATION, RESPONSE TIME, INITIAL APPEALS

Sec. 61. Examination of Application.

The Secretary shall cause an examination to be made of the application and if on such examination it is determined that the applicant is entitled to plant variety protection under the law, the Secretary shall issue a notice of allowance of plant variety protection therefor as hereinafter provided.

Sec. 62. Notice of Refusal; Reconsideration.

(a) Whenever an application is refused, or any objection or requirement made by the examiner, the Secretary shall notify the applicant thereof, stating the reasons therefor, together with such information and references as may be useful in judging the propriety of continuing the prosecution of the application; and if after receiving such notice the applicant requests reconsideration, with or without amendment, the application shall be reconsidered.

(b) For taking appropriate action after the mailing to him of an action other than allowance, an applicant shall be allowed six months, or such other time as the Secretary in exceptional circumstances shall set in the refusal, or such time as he may allow as an extension. Without such extension, action may be taken up to three months late by paying an additional fee to be prescribed by the Secretary.

Sec. 63. Initial Appeal.

When an application for plant variety protection has been refused by the Plant Variety Protection Office, the applicant may appeal to the Secretary. The Secretary shall seek the advice of the Plant Variety Protection Board on all appeals, before deciding the appeal.

Chapter 7.—APPEALS TO COURTS AND OTHER REVIEW

Sec. 71. Appeals.

From the decisions made under sections 44, 63, 91, 92, and 128 appeal may, within sixty days or such further time as the Secretary allows, be taken under the Federal Rules of Appellate Procedure. The Court of Customs and Patent Appeals and United States Courts of Appeals shall have jurisdiction, with venue in the case of the latter as stated in 28 U.S.C. 2343.

Sec. 72. Civil Action Against Secretary.

An applicant dissatisfied with a decision under section 63 or 91 of this title, may, as an alternative to appeal, have remedy by civil action against the Secretary in the United States District Court for the District of Columbia. Such action shall be commenced within sixty days after such decision or within such further time as the Secretary allows. The court may, in the case of review of a decision by the Secretary refusing plant variety protection, adjudge that such applicant is entitled to receive a certificate of plant variety protection for his variety as specified in his application as the facts of the case may appear, on compliance with the requirements of this Act.

Sec. 73. Appeal or Civil Action in Contested Cases.

(a) A party to a proceeding under section 92 of this title, dissatisfied with the decision, may take an appeal under section 71 or may have remedy by civil action if commenced within sixty days after such decision or within such further time as the Secretary allows. A party contemplating appeal as provided herein shall notify all adverse parties of his intention and any such adverse party, not the Secretary, shall have the right, by notice served within ten days of the notice to him, to elect that any review shall be by civil action. In such suits the record in the Plant Variety Protection Office shall be admitted on motion of any party upon the terms and conditions as to cost, expenses, and the further cross-examination of witnesses, as the court imposes, without prejudice to the right of the parties to take further testimony. The testimony and exhibits of the record in the Plant Variety Protection Office when admitted shall have the same effect as if originally taken and produced in the suit.

(b) Such suit may be instituted against the party in interest as shown by the record of the Plant Variety Protection Office at the time of the decision complained of, but any party in interest may become a party to the action. If there be adverse parties residing in a plurality of districts not embraced within the same State, or an adverse party residing in a foreign country, the United States District Court for the District of Columbia, or any United States district court to which it may transfer the case, shall have jurisdiction and may issue summons against the adverse parties directed to the marshal of any district in which any adverse party resides. Summons against adverse parties residing in foreign countries may be served by publication or otherwise as the court directs. The Secretary shall not be made a party but he shall have the right to intervene. Judgment of the court in favor of the right of an applicant to plant variety protection shall authorize the Secretary to issue a certificate of plant variety protection on the filing in the Plant Variety Protection Office of a certified copy of the judgment and on compliance with the requirements of this Act.

Chapter 8.—CERTIFICATES OF PLANT VARIETY PROTECTION

Sec. 81. Plant Variety Protection.

(a) If it appears that a certificate of plant variety protection should be issued on an application, a written notice of allowance shall be given or mailed to the owner. The notice shall specify the sum, constituting the issue fee, which shall be paid within one month thereafter.

(b) Upon timely payment of this sum, and provided that deposit of seed has been made in accordance with section 52(3), the certificate of plant variety protection shall issue.

(c) If any payment required by this section is not timely made, but is submitted with an additional fee prescribed by the Secretary within nine months after the due date or within such further time as the Secretary may allow, it shall be accepted.

Sec. 82. How Issued.

A certificate of plant variety protection shall be issued in the name of the United States of America under the seal of the Plant Variety Protection Office, and shall be signed by the Secretary or have his signature placed thereon, and shall be recorded in the Plant Variety Protection Office.

Sec. 83. Contents and Term of Plant Variety Protection.

(a) Every certificate of plant variety protection shall certify that the breeder (or his successor in interest) his heirs or assignees, has the right, during the term of the plant variety protection, to exclude others from selling the variety, or offering it for

sale, or reproducing it, or importing it, or exporting it, or using it in producing (as distinguished from developing) a hybrid or different variety therefrom, to the extent provided by this Act. If the owner so elects, the certificate shall also specify that in the United States seed of the variety shall be sold by variety name only as a class of certified seed and, if specified, shall also conform to the number of generations designated by the owner. Any rights, or all rights except those elected under the preceding sentence, may be waived; and the certificate shall conform to such waiver. The Secretary may at his discretion permit such election or waiver to be made after certifying and amend the certificate accordingly, without retroactive effect.

(b) The term of plant variety protection shall expire seventeen years from the date of issue of the certificate in the United States. If the certificate is not issued within three years from the effective filing date, the Secretary may shorten the term by the amount of delay in the prosecution of the application attributed by the Secretary to the applicant.

(c) The term of plant variety protection shall also expire if the owner fails to comply with regulations, in force at the time of certifying, relating to replenishing seed in a public repository: Provided, however, That this expiration shall not occur unless notice is mailed to the last owner recorded as provided in section 101(d) and he fails, within the time allowed thereafter, not less than three months, to comply with said regulations, paying an additional fee to be prescribed by the Secretary.

Sec. 84. Certificate of Correction of Plant Variety Protection Office Mistake.

Whenever a mistake in a certificate of plant variety protection, incurred through the fault of the Plant Variety Protection Office, is clearly disclosed by the records of the Office, the Secretary may issue a certificate of correction stating the fact and nature of such mistake, under seal, without charge, to be recorded in the records of plant variety protection. A copy thereof shall be attached to each copy of the published specifications or certificate of plant variety protection and such certificate of correction shall be considered as part of the original certificate of plant variety protection. Every such certificate of plant variety protection shall have the same effect as if the same had been originally issued in such corrected form. The Secretary may issue a corrected certificate of plant variety protection without charge in lieu of and with like effect as a certificate of correction.

Sec. 85. Certificate of Correction of Applicant's Mistake.

Whenever a mistake of a clerical or typographical nature, or of minor character, or in the description of the variety, which was not the fault of the Plant Variety Protection Office, appears in a certificate of plant variety protection and a showing has been made that such mistake occurred in good faith, the Secretary may, upon payment of the required fee, issue a certificate of correction in the manner and with attachment of copies as in section 84, if the correction unquestionably could have been made before the certificate issued. Such certificate of plant variety protection shall have the same effect and operation in law on the trial of actions for causes thereafter arising as if the same had been originally issued in such corrected form.

Sec. 86. Correction of Named Breeder.

An error as to the naming of a breeder in the application, without deceptive intent, shall not affect validity of plant variety protection and may be corrected at any time by the Secretary in accordance with regulations established by him or upon order of a federal court before which the matter is called in question. Upon such correction the Sec-

retary shall issue a certificate accordingly. Such correction shall not deprive any person of any rights he otherwise would have had.

Chapter 9.—REEXAMINATION AFTER ISSUE, AND CONTESTED PROCEEDINGS

Sec. 91. Reexamination After Issue.

(a) Any person may, within five years after the issuance of a certificate of plant variety protection, notify the Secretary in writing of facts which may have a bearing on the protectability of the variety, and the Secretary may cause such plant variety protection to be reexamined in the light thereof.

(b) Reexamination of plant variety protection under this section and appeals shall be pursuant to the same procedures and with the same rights as for original examinations. Abandonment of the procedure while subject to a ruling against the retention of the certificate shall result in cancellation of the plant variety certificate thereon and notice thereof shall be endorsed on copies of the specification of the protected plant variety thereafter distributed by the Plant Variety Protection Office.

(c) If a person acting under subsection (a) makes a prima facie showing of facts needing proof, the Secretary may direct that the reexamination include such interparty proceedings as he shall establish.

Sec. 92. Priority Contest.

(a) If the Secretary determines that two applications of different applicants may be based on the same variety, he may:

(1) Initiate a priority contest on his own motion whether or not one of the applications may have been certificated; or

(2) Issue a certificate on the application having the earliest effective filing date, with notice to all; or

(3) Issue a certificate naming alternative owners, under a single variety name acceptable to both.

(b) On request of any person when a certificate has been issued naming another as an owner or alternative owner, both having applied for protection on the same variety, the Secretary shall institute a priority contest, except that any person shall have forfeited his right to assert priority for the purpose of obtaining plant variety protection when an adverse certificate has issued if he fails to make the request within one year of the mailing of notice specified in part (2) above or if he fails to make the request within the period for taking action after refusal of his application on the basis of the adverse certificate.

Sec. 9. Effect of Adverse Final Judgment or of Non Action.

(a) A final judgment under section 92 adverse to an application from which no appeal or other review had been or can be taken or had shall constitute cancellation of any certifying on that application, and notice thereof shall be endorsed on copies of the specifications of the protected plant variety thereafter distributed by the Plant Variety Protection Office.

(b) Any person who has not proceeded in accordance with the provision of this chapter shall not be foreclosed or in any way prejudiced with respect to the defense of an infringement suit or affirmative relief under declaratory judgment proceedings.

(c) No person subject to an adverse decision in a proceeding under this chapter shall be foreclosed with respect to asserting comparable grounds in defense of an infringement suit or as a basis for affirmative relief under declaratory judgment proceedings.

Sec. 94. Interfering Plant Variety Protection.

The owner of a certificate of plant variety protection may have relief against another owner of a certificate of the same variety by civil action, and the court may adjudge the question of validity of the respective certificates, or the ownership of certificate. The

provisions of section 73(b) of this title shall apply to actions brought under this section.

TITLE III—PLANT VARIETY PROTECTION AND RIGHTS

Chapter	Section
10. Ownership and Assignment.....	101
11. Infringement of Plant Variety Protection	111
12. Remedies for Infringement of Plant Variety Protection, and Other Actions	121
13. Intent and Severability.....	131
14. Temporary Provision and Related Enactments; Exempted Plants; Miscellaneous	141
Chapter 10.—OWNERSHIP AND ASSIGNMENT	

Sec. 101. Ownership and Assignment.

(a) Subject to the provisions of this title, plant variety protection shall have the attributes of personal property.

(b) Applications for certificates of plant variety protection, or any interest in a variety, shall be assignable by an instrument in writing. The owner may in like manner license or grant and convey an exclusive right to use of the variety in the whole or any specified part of the United States.

(c) A certificate of acknowledgement under the hand and official seal of a person authorized to administer oaths within the United States, or in a foreign country, of a diplomatic or consular officer of the United States or an officer authorized to administer oaths whose authority is proved by a certificate of a diplomatic or consular officer of the United States, shall be prima facie evidence of the execution of an assignment, grant, license, or conveyance of plant variety protection or application for plant variety protection.

(d) An assignment, grant, conveyance or license shall be void as against any subsequent purchaser or mortgagee for a valuable consideration, without notice, unless it, or an acknowledgement thereof by the person giving such encumbrance that there is such encumbrance, is filed for recording in the Plant Variety Protection Office within one month from its date or at least one month prior to the date of such subsequent purchase or mortgage.

Sec. 102. Ownership During Testing.

An owner who, with notice that release is for testing only, releases possession of seed or other sexually reproducible plant material for testing retains ownership with respect thereto; and any diversion from authorized testing, or any unauthorized retention, of such material by anyone who has knowledge that it is under such notice, or who is chargeable with notice, is prohibited, and violates the property rights of the owner. Anyone receiving the material tagged or labeled with the notice is chargeable with the notice. The owner is entitled to remedy and redress in a civil action hereunder. No remedy available by State or local law is hereby excluded. No such notice shall be used, or if used be effective, when the owner has made identical sexually reproducible plant material available to the public, as by sale thereof.

Chapter 11.—INFRINGEMENT OF PLANT VARIETY PROTECTION

Sec. 111. Infringement of Plant Variety Protection.

Except as otherwise provided in this title, it shall be an infringement of the rights of the owner of a novel variety to perform without authority, any of the following acts in the United States, or in commerce which can be regulated by Congress or affecting such commerce, prior to expiration of the right to plant variety protection but after either the issue of the certificate or the distribution of a novel plant variety with the notice under section 127:

(1) sell the novel variety, or offer it or expose it for sale, deliver it, ship it, consign it, exchange it, or solicit an offer to buy it,

or any other transfer of title or possession of it;

(2) import the novel variety into, or export it from, the United States;

(3) sexually multiply the novel variety as a step in marketing (for growing purposes) the variety; or

(4) use the novel variety in producing (as distinguished from developing) a hybrid or different variety therefrom; or

(5) use seed which had been marked "propagation prohibited" or progeny thereof to propagate the novel variety; or

(6) dispense the novel variety to another, in a form which can be propagated, without notice as to being a protected variety under which it was received; or

(7) perform any of the foregoing acts even in instances in which the novel variety is multiplied other than sexually, except in pursuance of a valid United States plant patent; or

(8) instigate or actively induce performance of any of the foregoing acts.

Sec. 112. Grandfather Clause.

Nothing in this Act shall abridge the right of any person, or his successor in interest, to reproduce or sell a variety of developed and produced by such person more than one year prior to the effective filing date of an adverse application for a certificate of plant variety protection.

Sec. 113. Right To Save Seed. Crop Exemption.

Except to the extent that such action may constitute an infringement under subsections (3) and (4) of section 111, it shall not infringe hereunder for a person to save seed produced by him from seed obtained, or descended from seed obtained, by authority of the owner of the variety for seeding purposes and use such saved seed in the production of a crop for use on his farm, or for sale as provided in this section: *Provided*, That without regard to the provisions of section 111(3) it shall not infringe any right hereunder for a person, whose primary farming occupation is the growing of crops for sale for other than reproductive purposes, to sell such saved seed to other persons so engaged, for reproductive purposes, provided such sale is in compliance with such State laws governing the sale of seed as may be applicable. A bona fide sale for other than reproductive purposes, made in channels usual for such other purposes, of seed produced on a farm either from seed obtained by authority of the owner for seeding purposes or from seed produced by descent on such farm from seed obtained by authority of the owner for seeding purposes shall not constitute an infringement. A purchaser who diverts seed from such channels to seeding purposes shall be deemed to have notice under section 127 that his actions constitute an infringement.

Sec. 114. Research Exemption.

The use and reproduction of a protected variety for plant breeding or other bona fide research shall not constitute an infringement of the protection provided under this Act.

Sec. 115. Intermediary Exemption.

Transportation or delivery by a carrier in the ordinary course of its business as a carrier, or advertising by a person in the advertising business in the ordinary course of that business, shall not constitute an infringement of the protection provided under this Act.

Chapter 12.—REMEDIES FOR INFRINGEMENT OF PLANT VARIETY PROTECTION, AND OTHER ACTIONS

Sec. 121. Remedy for Infringement of Plant Variety Protection.

An owner shall have remedy by civil action for infringement of his plant variety protec-

tion under section 111. If a variety is sold under the name of a variety shown in a certificate, there is a prima facie presumption that it is the same variety.

Sec. 122. Presumption of Validity; Defenses.

(a) Certificates of plant variety protection shall be presumed valid. The burden of establishing invalidity of a plant variety protection shall rest on the party asserting invalidity.

(b) The following shall be defenses in any action charging infringement and shall be pleaded: (1) noninfringement, absence of liability for infringement, or unenforceability; (2) invalidity of the plant variety protection in suit on any ground specified in section 42 of this title as a condition for protectability; (3) invalidity of the plant variety protection in suit for failure to comply with any requirement of section 52; (4) that the asserted infringement was performed under an existing certificate adverse to that asserted and prior to notice of the infringement; and (5) any other fact or act made a defense by this Act.

Sec. 123. Injunction.

The several courts having jurisdiction of cases under this title may grant injunctions in accordance with the principles of equity to prevent the violation of any right hereunder on such terms as the court deems reasonable.

Sec. 124. Damages.

(a) Upon finding an infringement the court shall award damages adequate to compensate for the infringement but in no event less than a reasonable royalty for the use made of the variety by the infringer, together with interest and costs as fixed by the court.

(b) When the damages are not determined by the jury, the court shall determine them. In either event the court may increase the damages up to three times the amount determined.

(c) The court may receive expert testimony as an aid to the determination of damages or of what royalty would be reasonable under the circumstances.

(d) As to infringement prior to, or resulting from a planting prior to, issuance of a certificate for the infringed variety, a court finding the infringer to have established innocent intentions, shall have discretion as to awarding damages.

Sec. 125. Attorney Fees.

The court in exceptional cases may award reasonable attorney fees to the prevailing party.

Sec. 126. Time Limitation on Damages.

(a) No recovery shall be had for that part of any infringement committed more than six years (or known to the owner more than one year) prior to the filing of the complaint or counterclaim for infringement in the action.

(b) In the case of claims against the United States Government for unauthorized use of a protected variety, the period between the date of receipt of written claim for compensation by the department or agency of the Government having authority to settle such claim, and the date of mailing by the Government of a notice to the claimant that his claim has been denied shall not be counted as part of the period referred to in the preceding paragraph.

Sec. 127. Limitation of Damages; Marking and Notice.

Owners may give notice to the public by physically associating with or affixing to the container of seed of a novel variety or by fixing to the novel variety, a label containing the words "Propagation Prohibited" and after the certificate issues, such additional words as "U.S. Protected Variety". In the event the novel variety is distributed by authorization of the owner and is received by the infringer without such marking, no damages shall be recovered against such infringer

by the owner in any action for infringement, unless the infringer has actual notice or knowledge that propagation is prohibited or that the variety is a protected variety, in which event damages may be recovered only for infringement occurring after such notice. As to both damages and injunction, a court shall have discretion to be lenient as to disposal of materials acquired in good faith by acts prior to such notice.

Sec. 128. False Marking; Cease and Desist Orders.

(a) Each of the following acts, if performed in connection with the sale, offering for sale, or advertising of sexually reproducible plant material, is prohibited, and the Secretary may, if he determines after an opportunity for hearing that the act is being so performed, issue an order to cease and desist, said order being binding unless appealed under section 71:

(1) Use of the words "U.S. Protected Variety" or any word or number importing that the material is a variety protected under certificate, when it is not.

(2) Use of any wording importing that the material is a variety of which an application for plant variety protection is pending, when it is not.

(3) Use of the phrase "propagation prohibited" or similar phrase without reasonable basis, a statement of this basis being promptly filed with the Secretary if the phrase is used beyond testing and no application has been filed. Any reasonable basis expires one year after the first sale of the variety except as justified thereafter by a pending application or a certificate still in force.

(b) Anyone convicted of violating a binding cease and desist order, or of performing any act prohibited in subsection (a) of this section for the purpose of deceiving the public, shall be fined not more than \$10,000 and not less than \$500.

(c) Anyone whose business is damaged or is likely to be damaged by an act prohibited in subsection (a) of this section, or is subjected to competition in connection with which such act is performed, may have remedy by civil action.

Sec. 129. Nonresident Proprietors; Service and Notice.

Every owner not residing in the United States may file in the Plant Variety Protection Office a written designation stating the name and address of a person residing within the United States on whom may be served process or notice of proceedings affecting the plant variety protection or rights thereunder. If the person designated cannot be found at the address given in the last designation, or if no person has been designated, the United States District Court for the District of Columbia shall have jurisdiction and summons shall be served by publication or otherwise as the court directs. The court shall have the same jurisdiction to take any action respecting the plant variety protection, or rights thereunder that it would have if the owner were personally within the jurisdiction of the court.

Chapter 13.—INTENT AND SEVERABILITY

Sec. 131. Intent.

It is the intent of Congress to provide the indicated protection for new varieties by exercise of any constitutional power needed for that end, so as to afford adequate encouragement for research, and for marketing when appropriate, to yield for the public the benefits of new varieties. Constitutional clauses 3 and 8 of article I, section 8 are both relied upon.

Sec. 132. Severability.

If this Act is held unconstitutional as to some provisions or circumstances, it shall remain in force as to the remainder and other circumstances.

Chapter 14.—TEMPORARY PROVISION
AND RELATED ENACTMENTS; EX-
EMPTED PLANTS; MISCELLANEOUS

Sec. 141. Effective Date.

This Act shall take effect upon enactment. Applications may be filed with the Secretary and held by him until the Office of Plant Variety Protection is organized and in operation.

Sec. 142. Amendment of Federal Seed Act.

The Federal Seed Act (53 Stat. 1275) is amended as follows:

(a) By adding at the end thereof:

"TITLE V—SALE OF UNCERTIFIED SEED
OF PROTECTED VARIETY

"Section 501.

"(a) It shall be unlawful in the United States or in interstate or foreign commerce to sell by variety name seed not certified by an official seed certifying agency when it is a variety for which a certificate of plant variety protection under the Plant Variety Protection Act specifies sale only as a class of certified seed: Provided, That seed from a certified lot may be labeled as to variety name when used in a mixture by, or with the approval of, the owner of the variety."

(b) By adding at the end of section 102 the following wording: "Seed a variety for which a certificate of plant variety protection under the Plant Variety Protection Act specifies sale only as a class of certified seed shall be certified only when

"(1) the basic seed from which the variety was produced was furnished by authority of the owner of the variety if the certification is made during the term of protection, and

"(2) it conforms to the number of generations designated by the certificate, if the certificate contains such a designation.".

Sec. 143. Amendment of Judicial Code.

Title 28 of the United States Code, entitled Judicial Code and Judiciary, is amended as follows:

(a) After section 1544 add:

Sec. 1545. Decision of the Plant Variety Protection Office.

"The Court of Customs and Patent Appeals shall have nonexclusive jurisdiction of appeals under section 71 of the Plant Variety Protection Act."

(b) In section 1338 after "Patents" in the heading, after "patents" and after "patent" (both occurrences) insert ", plant variety protection".

(c) After section 2351 add:

2353. The Court of appeals has nonexclusive jurisdiction to hear appeals under section 71 of the Plant Variety Protection Act.

Sec. 144. Exempted Plants.

The provisions of this Act shall not apply to the seeds, plants, or transplants of okra, celery, peppers, tomatoes, carrots, and cucumbers.

Sec. 144. Sec. 145. Short Title.

This Act may be cited as the "Plant Variety Protection Act."

The amendments of the Committee on the Judiciary are as follows:

On page 53, line 16, after the word "costs", strike out "or" and insert "of"; on page 55, line 18, after the word "flax," strike out "carrot,"; on page 58, line 3, strike out "(3) Another is entitled to an earlier date of determina-"; on page 60, line 5, after the word "with", strike out "regulation" and insert "regulations"; on page 62, line 8, after the word "by", strike out "citizens" and insert "nationals"; on page 85, line 3, after the word "the", strike out "remainder" and insert "remaining provisions"; and on page 87, at the beginning of line 6, change the section number from "144" to "145".

Mr. MILLER. Mr. President, I ask the Senate to approve S. 3070, the Plant Variety Protection Act, which I introduced on October 23, 1969. I wish to extend my appreciation to Senator JORDAN of North Carolina, the chairman of the Subcommittee on Agricultural Research and General Legislation, and Senator ELLENDER, chairman of the Senate Agriculture Committee, and to Senator EASTLAND, chairman of the Senate Judiciary Committee, for their cooperation in getting the committee work accomplished without which this bill could not have reached the calendar.

All should be interested in the growth and well-being of agriculture, the world's largest industry. One of the smallest but most vital raw materials for this industry is seed. American farmers spend approximately three-quarters of a billion dollars for seed each year. The Plant Variety Protection Act is designed to encourage the development of new varieties of sexually reproduced plants by providing protection for those who breed and develop them, thus promoting the growth and well-being of agriculture.

Breeding programs, whether public or private, require substantial investments in research, facilities, land, and labor. A private company cannot afford to make such investments unless it has the opportunity to make a profit. Heavy commercial investments in research have already produced new varieties of corn and sorghum hybrids. One of the most well-known discoveries of recent years is high lysine corn, the inbred lines of which would be covered by this bill. Hybrids have their own built-in protection for their developer, since he can control the inbred or parental stocks and the hybrid cannot be reproduced from hybrid seed. Therefore, hybrids are excluded from the bill.

The constitutional authority for providing plant variety protection is found in the authors and inventors clause of the U.S. Constitution—article I, section 8, clause 8—which gives Congress the power to secure "for limited times to authors and inventors the exclusive right to their respective writings and discoveries"; and also in the commerce clause—article I, section 8, clause 3. The Constitution clearly intended recognition of inventors and discoverers for their work in all segments of industry, including agriculture. Therefore, it is entirely proper to extend some form of rights to plant breeders of sexually reproduced plants.

Mr. President, this legislation will serve as a stimulus for investment of private funds in variety research and development of seed. Agricultural producers will benefit from the new and improved varieties providing larger yields, greater disease and insect resistance, increased protein, oil and fiber strength, and other crop improvements. The ultimate consumer will also benefit from the greater efficiency of crop production.

New and improved varieties of high-quality seed must be developed to keep our farmers competitive, both at home and abroad. American agriculture constantly needs new crop varieties, because the hazards from disease and insect pests are constantly changing. For example,

some plants which are immune to certain diseases, such as rusts, are not immune to new strains of those diseases. We cannot afford to stand still. Passage of this bill will help us move forward.

The amendments were agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed, as follows:

S. 3070

An act to encourage the development of novel varieties of sexually reproduced plants and to make them available to the public, providing protection available to those who breed, develop, or discover them, and thereby promoting progress in agriculture in the public interest

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

INDEX

	Section
TITLE I—Plant Variety Protection Office	1
TITLE II—Protectability of Plant Varieties and Certificates of Protection	41
TITLE III—Plant Variety Protection and Rights	101

TITLE I—PLANT VARIETY PROTECTION
OFFICE

Chapter	Section
1. Organization and Publications	1
2. Legal Provisions as to the Plant Variety Protection Office	21
3. Plant Variety Protection Fees	31

Chapter 1.—ORGANIZATION AND
PUBLICATIONS

Section 1. Establishment.

There is hereby established in the Department of Agriculture a bureau to be known as the Plant Variety Protection Office, which shall have the functions set forth in his Act.

Sec. 2. Seal.

The Plant Variety Protection Office shall have a seal with which documents and certificates evidencing plant variety protection shall be authenticated.

Sec. 3. Organization.

The organization of the Plant Variety Protection Office shall, except as provided herein, be determined by the Secretary of Agriculture (hereinafter called the Secretary). The office shall devote itself substantially exclusively to the administration of this Act.

Sec. 4. Restrictions on Employees as to Interest in Plant Variety Protection.

Employees of the Plant Variety Protection Office shall be ineligible during the periods of their employment, to apply for plant variety protection and to acquire directly or indirectly, except by inheritance or bequest, any right or interest in any matters before that office. This section shall not apply to members of the Plant Variety Protection Board who are not otherwise employees of the Plant Variety Protection Office.

Sec. 5. Bond of Employees.

Such employees as the Secretary designates, before entering upon their duties, shall severally give bond, with sureties, in sums prescribed by the Secretary, conditioned for the faithful discharge of their respective duties and that they shall render to the proper officers of the Treasury a true account of all money received by virtue of their offices.

Sec. 6. Regulations.

The Secretary may establish regulations, not inconsistent with law, for the conduct of proceedings in the Plant Variety Protection Office after consultations with the Plant Variety Protection Board.

Sec. 7. Plant Variety Protection Board.

(a) APPOINTMENT.—The Secretary shall appoint a Plant Variety Protection Board.

The Board shall consist of individuals who are experts in various areas of varietal development covered by this Act. Membership of the Board shall include farmer representation and shall be drawn approximately equally from the private or seed industry sector and from the sector of government or the public. The Secretary or his designee shall act as chairman of the Board without voting rights except in the case of ties.

(b) **FUNCTIONS OF BOARD.**—The functions of the Plant Variety Protection Board shall include:

(1) Advising the Secretary concerning the adoption of Rules and Regulations to facilitate the proper administration of this Act;

(2) Making advisory decisions on all appeals from the examiner. The Board shall determine whether to act as a full Board or by panels it selects; and whether to review advisory decisions made by a panel. For service on such appeals, the Board may select, as temporary members, experts in the area to which the particular appeal relates; and

(3) Advising the Secretary on all questions under section 44.

(c) **COMPENSATION OF BOARD.**—The members of the Plant Variety Protection Board shall serve without compensation except for standard government reimbursable expenses.

Sec. 8. Library.

The Secretary shall maintain a library of scientific and other works and periodicals, both foreign and domestic, in the Plant Variety Protection Office to aid the officers in the discharge of their duties.

Sec. 9. Register of Protected Plant Varieties.

The Secretary shall maintain a register of published specifications of United States protected plant varieties and a file of such other scientific and technical information as may be necessary or practicable.

Sec. 10. Publications.

(a) The Secretary may publish, or cause to be published, in such format as he shall determine to be suitable, the following:

(1) The specifications for plant variety protection including drawings and photographs.

(2) The Official Journal of the Plant Variety Protection Office, including annual indices.

(3) Pamphlet copies of the plant variety protection laws and rules of practice and circulars or other publications relating to the business of the Office.

(b) The Plant Variety Protection Office may print the heading of the drawings or photographs for protected plant varieties for the purpose of photolithography and may provide suitable copy for any lithography to appear on the same page.

(c) The Secretary may (1) establish public facilities for the searching of plant variety protection records and materials, and (2) from time to time, as through an information service, disseminate to the public those portions of the technological and other public information available to or within the Plant Variety Protection Office to encourage innovation and promote the progress of the useful arts.

(d) The Secretary may exchange any of the publications specified for publications desirable for the use of the Plant Variety Protection Office. The Secretary may exchange copies of specifications, drawings, and photographs of United States protected plant varieties for copies of specifications, drawings, and photographs of applications and protected plant varieties of foreign countries.

Sec. 11. Copies for Public Libraries.

The Secretary may supply printed copies of specifications, drawings, and photographs of protected plant varieties to public libraries in the United States which shall maintain such copies for the use of the public.

Chapter 2.—LEGAL PROVISIONS AS TO THE PLANT VARIETY PROTECTION OFFICE

Sec. 21. Day for Taking Action Falling on Saturday, Sunday, or Holiday.

When the day, or the last day, for taking any action or paying any fee in the United States Plant Variety Protection Office falls on Saturday, Sunday, a holiday within the District of Columbia, or on any other day the Plant Variety Protection Office is closed for the receipt of papers, the action may be taken or the fee paid, on the next succeeding business day.

Sec. 22. Form of Papers Filed.

The Secretary may by regulations prescribe the form of papers to be filed in the Plant Variety Protection Office.

Sec. 23. Testimony in Plant Variety Protection Office Cases.

The Secretary may establish regulations for taking affidavits, depositions, and other evidence required in cases before the Plant Variety Protection Office. Any officer authorized by law to take depositions to be used in the courts of the United States, or of the State where he resides, may take such affidavits and depositions, and swear the witnesses. If any person acts as a hearing officer by authority of the Secretary, he shall have like power.

Sec. 24. Subpenas, Witnesses.

(a) The clerk of any United States court for the district wherein testimony is to be taken in accordance with regulations established by the Secretary for use in any contested case in the Plant Variety Protection Office shall, upon the application of any party thereof, issue a subpoena for any witness residing or being within such district or within one hundred miles of the stated place in such district, commanding him to appear and testify before an officer in such district authorized to take depositions and affidavits, at the time and place stated in the subpoena. The provisions of the Federal Rules of Civil Procedure relating to the attendance of witnesses and the production of documents and things shall apply to contested cases in the Plant Variety Protection Office insofar as consistent with such regulations.

(b) Every witness subpoenaed or testifying shall be allowed the fees and traveling expenses allowed to witnesses attending the United States district courts.

(c) A judge of a court whose clerk issued a subpoena may enforce obedience to the process or punish disobedience as in other like cases, on proof that a witness, served with such subpoena, neglected or refused to appear or to testify. No witness shall be deemed guilty of contempt for disobeying such subpoena unless his fees and traveling expenses in going to, and returning from, one day's attendance at the place of examination, are paid or tendered him at the time of the service of the subpoena; nor for refusing to disclose any secret matter except upon appropriate order of the court which issued the subpoena or of the Secretary.

Sec. 25. Effect of Defective Execution.

Any document to be filed in the Plant Variety Protection Office and which is required by any law or regulation to be executed in a specified manner may be provisionally accepted by the Secretary despite a defective execution, provided a properly executed document is submitted within such time as may be prescribed.

Sec. 26. Regulations for Practice Before the Office.

The Secretary shall prescribe regulations governing the admission to practice and conduct of persons representing applicants or other parties before the Plant Variety Pro-

tection Office. The Secretary may, after notice and opportunity for a hearing, suspend or exclude, either generally or in any particular case, from further practice before the Office of Plant Variety Protection any person shown to be incompetent or disreputable or guilty of gross misconduct.

Sec. 27. Unauthorized Practice.

Anyone who in the United States engages in direct or indirect practice before the Office of Plant Variety Protection while suspended or excluded under section 26, or without being admitted to practice before the Office, shall be liable in a civil action for the return of all money received, and for compensation for damage done by such person and also may be enjoined from such practice. However, there shall be no liability for damage if such person establishes that the work was done competently and without negligence. This section does not apply to anyone who, without a claim of self-sufficiency, works under the supervision of another who stands admitted and is the responsible party; nor to anyone who establishes that he acted only on behalf of any employer by whom he was regularly employed.

Chapter 3.—PLANT VARIETY PROTECTION FEES

Sec. 31. Plant Variety Protection Fees; Appropriations.

The Secretary shall, under such regulations as he may prescribe, charge and collect reasonable fees for services performed under this Act. The fees authorized by this section shall be established to substantially cover the costs of administration of this Act. Such fees shall be deposited into a fund to be available, without fiscal year limitation, for the administration of this Act. The initial capital of the fund shall consist of appropriations, which are hereby authorized to be made. Until such time as the Secretary prescribes fees as provided by this section, a fee of \$50 shall be charged for filing each application, subject to such adjustment as may be appropriate after fees are prescribed by the Secretary hereunder.

Sec. 32. Payment of Plant Variety Protection Fees; Return of Excess Amounts.

All fees shall be paid to the Secretary, and the Secretary may refund any sum paid by mistake or in excess of the fee required.

TITLE II—PROTECTABILITY OF PLANT VARIETIES AND CERTIFICATES OF PROTECTION

Chapter	Section
4. Protection of Plant Varieties.....	41
5. Applications; Form, Who May File, Relating Back, Confidentiality.....	51
6. Examination: Response Time, Initial Appeals	61
7. Appeals to Courts and Other Review..	71
8. Certificates of Plant Variety Protection	81
9. Reexamination After Issue, and Contested Proceedings.....	91

Chapter 4.—PROTECTABILITY OF PLANT VARIETIES

Sec. 41. Definitions and Rules of Construction.

The definitions and rules of construction set forth in this section apply for the purposes of this Act.

(a) The term "novel variety" may be represented by, without limitation, seed, transplants, and plants, and is satisfied if there is:

(1) Distinctness in the sense that the variety clearly differs by one or more identifiable morphological, physiological or other characteristics (which may include those evidenced by processing or product characteristics, for example, milling and baking char-

acteristics in the case of wheat) as to which a difference in genealogy may contribute evidence, from all prior varieties of public knowledge at the date of determination within the provisions of section 42; and

(2) Uniformity in the sense that any variations are describable, predictable and commercially acceptable; and

(3) Stability in the sense that the variety, when sexually reproduced or reconstituted, will remain unchanged with regard to its essential and distinctive characteristics with a reasonable degree of reliability commensurate with that of varieties of the same category in which the same breeding method is employed.

(b) The terms "United States" and "this country" mean the United States of America, its territories and possessions, and the Commonwealth of Puerto Rico.

(c) The term "kind" means one or more related species or subspecies singly or collectively known by one common name, for example, soybean, flax, or radish.

(d) The term "date of determination" means the date when there has been at least tentative determination that the variety has been sexually reproduced with recognized characteristics, whether or not the novelty of those characteristics has been determined.

(e) The term "breeder" shall mean the person who—

(1) directs the final breeding creating the novel variety, or

(2) discovers the novel variety, and makes the tentative determination described in subsection (d). Where such actions are conducted by an agent on behalf of his principal, the principal, rather than the agent, shall be considered the breeder. The terms "breed", "develop", "originate", and "discover", and derivatives thereof shall each include the other.

(f) The term "sexually reproduced" shall include any production of a variety by seed.

(g) The term "basic seed" means the seed planted to produce certified or commercial seed.

(h) The term "testing" means testing or experimental use of a variety before any sale thereof. Sale for other than seed purposes of seed or other plant material produced as the result of testing shall not constitute a sale for the purpose of the preceding sentence or for the purpose of the following subsection.

(i) The term "public variety" means a variety sold or used in this country, or existing in and publicly known in this country; but use for the purpose of testing, or sale or use as individual plants not known to be sexually reproducible, shall not make the variety a public variety.

(j) A variety described in a publication as specified in section 42(a)(1)(B) is "effectively available to workers in this country" if a source from which it can be purchased is indicated in such publication or readily determinable or if such publication teaches how to produce the variety from source-material effectively available to workers in this country.

Sec. 42. Right to Plant Variety Protection; Plant Varieties Protectable.

(a) The breeder of any novel variety of sexually reproduced plant (other than fungi, bacteria, or first generation hybrids) who has so reproduced the variety, or his successor in interest, shall be entitled to plant variety protection therefor, subject to the conditions and requirements of this title unless one of the following bars exists:

(1) Before the date of determination thereof by the breeder, or more than one year before the effective filing date of the application therefor, the variety was (A) a public variety in this country, or (B) effectively available to workers in this country and adequately describe by a publication reasonably deemed a part of the public technical knowledge in this country which description

must include a disclosure of the principal characteristics by which the variety is distinguished.

(2) An application for protection of the variety based on the same breeder's acts, was filed in a foreign country by the owner or his privies more than one year before the effective filing date of the application filed in the United States.

(3) Another is entitled to an earlier date of determination for the same variety and such other (A) has a certificate of plant variety protection hereunder or (B) has been engaged in a continuing program of development and testing to commercialization, or (C) has within six months after such earlier date of determination adequately described the variety by a publication reasonably deemed a part of the public technical knowledge in this country which description must include a disclosure of the principal characteristics by which the variety is distinguished.

(b) The Secretary may, by regulation, extend for a reasonable period of time the one year time period provided in subsection (a) for filing applications, and may in that event provide for at least commensurate reduction of the term of protection.

Sec. 43. Reciprocity Limits.

Protection under the Act may, by regulation, be limited to nationals of the United States, except where this limitation would violate a treaty and except that nationals of a foreign state in which they are domiciled shall be entitled to so much of the protection here afforded as is afforded by said foreign state to nationals of the United States for the same genus and species.

Sec. 44. Public Interest In Wide Usage.

The Secretary may declare a protected variety open to use on a basis of equitable remuneration to the owner, not less than a reasonable royalty, when he determines that such declaration is necessary in order to insure an adequate supply of fiber, food, or feed in this country and that the owner is unwilling or unable to supply the public needs for the variety at a price which may reasonably be deemed fair. Such declaration may be, with or without limitation, with or without designation of what the remuneration is to be; and shall be subject to review as under section 71 or 72 (any finding that the price is not reasonable being reviewable); and shall remain in effect not more than two years. In the event litigation is required to collect such remuneration, a higher rate may be allowed by the court.

Chapter 5.—APPLICATIONS: FORM, WHO MAY FILE, RELATING BACK, CONFIDENTIALITY

Sec. 51. Application for Recognition of Plant Variety Rights.

(a) An application for a certificate of Plant Variety Protection may be filed by the owner of the variety sought to be protected. The application shall be made in writing to the Secretary, shall be signed by or on behalf of the applicant, and shall be accompanied by the prescribed fee.

(b) An error as to the naming of the breeder, without deceptive intent, may be corrected at any time, in accordance with regulations established by the Secretary.

Sec. 52. Content of Application.

An application for a certificate recognizing plant variety rights shall contain:

(1) The name of the variety except that a temporary designation will suffice until the certificate is to be issued.

(2) A description of the variety setting forth its novelty and a description of the genealogy and breeding procedure, when known. The Secretary may require amplification, including the submission of adequate photographs or drawings or plant specimens, if the description is not adequate or as complete as is reasonably possible, and submit-

sion of records or proof of ownership or of allegations made in the application. An applicant may add to or correct the description at any time, before the certificate is issued, upon a showing acceptable to the Secretary that the revised description is retroactively accurate. Courts shall protect others from any injustice which would result. The Secretary may accept records of the breeder and of any official seed certifying agency in this country as evidence of stability where applicable.

(3) A declaration that a viable sample of basic seed necessary for propagation of the variety will be deposited and replenished periodically in a public repository in accordance with regulations to be established hereunder. This declaration may be added by amendment.

(4) A statement of the basis of applicant's ownership.

Sec. 53. Joint Breeders.

(a) When two or more persons are the breeders, one (or his successor) may apply, naming the others.

(b) The Secretary, after such notice as he may prescribe, may issue a certificate of plant variety protection to the applicant and such of the other breeders (or their successors in interest) as may have subsequently joined in the application.

Sec. 54. Death or Incapacity of Breeder.

Legal representatives of deceased breeders and of those under legal incapacity may make application for plant variety protection upon compliance with the requirements and on the same terms and conditions applicable to the breeder or his successor in interest.

Sec. 55 Benefit of Earlier Filing Date.

(a) An application for a certificate of plant variety protection filed in this country based on the same variety, and on rights derived from the same breeder, on which there has previously been filed an application for plant variety protection in a foreign country which affords similar privileges in the case of applications filed in the United States by nationals of the United States, shall have the same effect as the same application would have if filed in the United States on the date on which the application for plant variety protection for the same variety was first filed in such foreign country, if the application in this country is filed within twelve months from the earliest date on which such foreign application was filed. No application shall be entitled to a right of priority under this section, unless the applicant designates the foreign application in his application or by amendment thereto and, if required by the Secretary, furnishes such copy, translation or both, as the Secretary may specify.

(b) An application for a certificate of plant variety protection for the same variety as was the subject of an application previously filed in the United States by or on behalf of the same person, or by his predecessor in title, shall have the same effect as to such variety as though filed on the date of the prior application if filed before the issuance of the certificate or other termination of proceedings on the first application or on an application similarly entitled to the benefit of the filing date of the first application and if it contains or is amended to contain a specific reference to the earlier filed application.

(c) A later application shall not by itself establish that a characteristic newly described was in the variety at the time of the earlier application.

Sec. 56. Confidential Status of Application.

Applications for plant variety protection and their contents shall be kept in confidence by the Plant Variety Protection Office, by the Board, and by the offices in the Department of Agriculture to which access may be given under regulations. No information

concerning the same shall be given without the authority of the owner, unless necessary under special circumstances as may be determined by the Secretary, except that the Secretary may publish the variety names designated in applications, stating the kind to which each applies.

Sec. 57. Publication.

The Secretary may establish regulations for the publication of any pending application when publication is requested by the owner.

Chapter 6.—EXAMINATION, RESPONSE TIME, INITIAL APPEALS

Sec. 61. Examination of Application.

The Secretary shall cause an examination to be made of the application and if on such examination it is determined that the applicant is entitled to plant variety protection under the law, the Secretary shall issue a notice of allowance of plant variety protection therefor as hereinafter provided.

Sec. 62. Notice of Refusal; Reconsideration.

(a) Whenever an application is refused, or any objection or requirement made by the examiner, the Secretary shall notify the applicant thereof, stating the reasons therefor, together with such information and references as may be useful in judging the propriety of continuing the prosecution of the application; and if after receiving such notice the applicant requests reconsideration, with or without amendment, the application shall be reconsidered.

(b) For taking appropriate action after the mailing to him of an action other than allowance, an applicant shall be allowed six months, or such other time as the Secretary in exceptional circumstances shall set in the refusal, or such time as he may allow as an extension. Without such extension, action may be taken up to three months late by paying an additional fee to be prescribed by the Secretary.

Sec. 63. Initial Appeal.

When an application for plant variety protection has been refused by the Plant Variety Protection Office, the applicant may appeal to the Secretary. The Secretary shall seek the advice of the Plant Variety Protection Board on all appeals, before deciding the appeal.

Chapter 7.—APPEALS TO COURTS AND OTHER REVIEW

Sec. 71. Appeals.

From the decisions made under sections 44, 63, 91, 92, and 128 appeal may, within sixty days or such further time as the Secretary allows, be taken under the Federal Rules of Appellate Procedure. The Court of Customs and Patent Appeals and United States Courts of Appeals shall have jurisdiction, with venue in the case of the latter as stated in 28 U.S.C. 2343.

Sec. 72. Civil Action Against Secretary.

An applicant dissatisfied with a decision under section 63 or 91 of this title, may, as an alternative to appeal, have remedy by civil action against the Secretary in the United States District Court for the District of Columbia. Such action shall be commenced within sixty days after such decision or within such further time as the Secretary allows. The court may, in the case of review of a decision by the Secretary refusing plant variety protection, adjudge that such applicant is entitled to receive a certificate of plant variety protection for his variety as specified in his application as the facts of the case may appear, on compliance with the requirements of this Act.

Sec. 73. Appeal or Civil Action in Contested Cases.

(a) A party to a proceeding under section 92 of this title, dissatisfied with the decision, may take an appeal under section 71 or may

have remedy by civil action if commenced within sixty days after such decision or within such further time as the Secretary allows. A party contemplating appeal as provided herein shall notify all adverse parties of his intention and any such adverse party, not the Secretary, shall have the right, by notice served within ten days of the notice to him, to elect that any review shall be by civil action. In such suits the record in the Plant Variety Protection Office shall be admitted on motion of any party upon the terms and conditions as to costs, expenses, and the further cross-examination of witnesses, as the court imposes, without prejudice to the right of the parties to take further testimony. The testimony and exhibits of the record in the Plant Variety Protection Office when admitted shall have the same effect as if originally taken and produced in the suit.

(b) Such suit may be instituted against the party in interest as shown by the record of the Plant Variety Protection Office at the time of the decision complained of, but any party in interest may become a party to the action. If there be adverse parties residing in a plurality of districts not embraced within the same State, or an adverse party residing in a foreign country, the United States District Court for the District of Columbia, or any United States district court to which it may transfer the case, shall have jurisdiction and may issue summons against the adverse parties directed to the marshal of any district in which any adverse party resides. Summons against adverse parties residing in foreign countries may be served by publication or otherwise as the court directs. The Secretary shall not be made a party but he shall have the right to intervene. Judgment of the court in favor of the right of an applicant to plant variety protection shall authorize the Secretary to issue a certificate of plant variety protection on the filing in the Plant Variety Protection Office of a certified copy of the judgment and on compliance with the requirements of this Act.

Chapter 8.—CERTIFICATES OF PLANT VARIETY PROTECTION

Sec. 81. Plant Variety Protection.

(a) If it appears that a certificate of plant variety protection should be issued on an application, a written notice of allowance shall be given or mailed to the owner. The notice shall specify the sum, constituting the issue fee, which shall be paid within one month thereafter.

(b) Upon timely payment of this sum, and provided that deposit of seed has been made in accordance with section 52(3), the certificate of plant variety protection shall issue.

(c) If any payment required by this section is not timely made, but is submitted with an additional fee prescribed by the Secretary within nine months after the due date or within such further time as the Secretary may allow, it shall be accepted.

Sec. 82. How Issued.

A certificate of plant variety protection shall be issued in the name of the United States of America under the seal of the Plant Variety Protection Office, and shall be signed by the Secretary or have his signature placed thereon, and shall be recorded in the Plant Variety Protection Office.

Sec. 83. Contents and term of Plant Variety Protection.

(a) Every certificate of plant variety protection shall certify that the breeder (or his successor in interest) his heirs or assignees, has the right, during the term of the plant variety protection, to exclude others from selling the variety, or offering it for sale, or reproducing it, or importing it, or exporting it, or using it in producing (as distinguished from developing) a hybrid or different variety therefrom, to the extent

provided by this Act. If the owner so elects, the certificate shall also specify that in the United States seed of the variety shall be sold by variety name only as a class of certified seed and, if specified, shall also conform to the number of generations designated by the owner. Any rights, or all rights except those elected under the preceding sentence, may be waived; and the certificate shall conform to such waiver. The Secretary may at his discretion permit such election or waiver to be made after certifying and amend the certificate accordingly, without retroactive effect.

(b) The term of plant variety protection shall expire seventeen years from the date of issue of the certificate in the United States. If the certificate is not issued within three years from the effective filing date, the Secretary may shorten the term by the amount of delay in the prosecution of the application attributed by the Secretary to the applicant.

(c) The term of plant variety protection shall also expire if the owner fails to comply with regulations, in force at the time of certifying, relating to replenishing seed in a public repository: *Provided, however,* That this expiration shall not occur unless notice is mailed to the last owner recorded as provided in section 101(d) and he fails, within the time allowed thereafter, not less than three months, to comply with said regulations, paying an additional fee to be prescribed by the Secretary.

Sec. 84. Certificate of Correction of Plant Variety Protection Office Mistake.

Whenever a mistake in a certificate of plant variety protection, incurred through the fault of the Plant Variety Protection Office, is clearly disclosed by the records of the Office, the Secretary may issue a certificate of correction stating the fact and nature of such mistake, under seal, without charge, to be recorded in the records of plant variety protection. A copy thereof shall be attached to each copy of the published specifications or certificate of plant variety protection and such certificate of correction shall be considered as part of the original certificate of plant variety protection. Every such certificate of plant variety protection shall have the same effect as if the same had been originally issued in such corrected form. The Secretary may issue a corrected certificate of plant variety protection without charge in lieu of and with like effect as a certificate of correction.

Sec. 85. Certificate of Correction of Applicant's Mistake.

Whenever a mistake of a clerical or typographical nature, or of minor character, or in the description of the variety, which was not the fault of the Plant Variety Protection Office, appears in a certificate of plant variety protection and a showing has been made that such mistake occurred in good faith, the Secretary may, upon payment of a required fee, issue a certificate of correction in the manner and with attachment of copies as in section 84, if the correction unquestionably could have been made before the certificate issued. Such certificate of plant variety protection shall have the same effect and operation in law on the trial of actions for causes thereafter arising as if the same had been originally issued in such corrected form.

An error as to the naming of a breeder in the application, without deceptive intent, shall not affect validity of plant variety protection and may be corrected at any time by the Secretary in accordance with regulations established by him or upon order of a federal court before which the matter is called in question. Upon such correction the Secretary shall issue a certificate accordingly. Such correction shall not deprive any person of any rights he otherwise would have had.

Chapter 9.—REEXAMINATION AFTER ISSUE, AND CONTESTED PROCEEDINGS

Sec. 91. Reexamination After Issue.

(a) Any person may, within five years after the issuance of a certificate of plant variety protection, notify the Secretary in writing of facts which may have a bearing on the protectability of the variety, and the Secretary may cause such plant variety protection to be reexamined in the light thereof.

(b) Reexamination of plant variety protection under this section and appeals shall be pursuant to the same procedures and with the same rights as for original examinations. Abandonment of the procedure while subject to a ruling against the retention of the certificate shall result in cancellation of the plant variety certificate thereon and notice thereof shall be endorsed on copies of the specification of the protected plant variety thereafter distributed by the Plant Variety Protection Office.

(c) If a person acting under subsection (a) makes a prima facie showing of facts needing proof, the Secretary may direct that the reexamination include such interparty proceedings as he shall establish.

Sec. 92. Priority Contest.

(a) If the Secretary determines that two applications of different applicants may be based on the same variety, he may:

(1) Initiate a priority contest on his own motion whether or not one of the applications may have been certificated; or

(2) Issue a certificate on the application having the earliest effective filing date, with notice to all; or

(3) Issue a certificate naming alternative owners, under a single variety name acceptable to both.

(b) On request of any person when a certificate has been issued naming another as an owner or alternative owner, both having applied for protection on the same variety, the Secretary shall institute a priority contest, except that any person shall have forfeited his right to assert priority for the purpose of obtaining plant variety protection when an adverse certificate has issued if he fails to make the request within one year of the mailing of notice specified in part (2) above or if he fails to make the request within the period for taking action after refusal of his application on the basis of the adverse certificate.

Sec. 93. Effect of Adverse Final Judgment or of Non Action.

(a) A final judgment under section 92 adverse to an application from which no appeal or other review had been or can be taken or had shall constitute cancellation or any certifying on that application, and notice thereof shall be endorsed on copies of the specifications of the protected plant variety thereafter distributed by the Plant Variety Protection Office.

(b) Any person who has not proceeded in accordance with the provision of this chapter shall not be foreclosed or in any way prejudiced with respect to the defense of an infringement suit or affirmative relief under declaratory judgment proceedings.

(c) No person subject to an adverse decision in a proceeding under this chapter shall be foreclosed with respect to asserting comparable grounds in defense of an infringement suit or as a basis for affirmative relief under declaratory judgment proceedings.

Sec. 94. Interfering Plant Variety Protection.

The owner of a certificate of plant variety protection may have relief against another owner of a certificate of the same variety by civil action, and the court may adjudge the question of validity of the respective certificates, or the ownership of the certificate. The provisions of section 73(b) of this title shall apply to actions brought under this section.

TITLE III—PLANT VARIETY PROTECTION AND RIGHTS

Chapter	Section
10. Ownership and Assignment	101
11. Infringement of Plant Variety Protection	111
12. Remedies for Infringement of Plant Variety Protection, and Other Actions	121
13. Intent and Severability	131
14. Temporary Provision and Related Enactments; Exempted Plants; Miscellaneous	141

Chapter 10.—OWNERSHIP AND ASSIGNMENT

Sec. 101. Ownership and Assignment.

(a) Subject to the provisions of this title, plant variety protection shall have the attributes of personal property.

(b) Applications for certificates of plant variety protection, or any interest in a variety, shall be assignable by an instrument in writing. The owner may in like manner license or grant and convey an exclusive right to use of the variety in the whole or any specified part of the United States.

(c) A certificate of acknowledgment under the hand and official seal of a person authorized to administer oaths within the United States, or in a foreign country, of a diplomatic or consular officer of the United States or an officer authorized to administer oaths whose authority is proved by a certificate of a diplomatic or consular officer of the United States, shall be prima facie evidence of the execution of an assignment, grant, license, or conveyance of plant variety protection or application for plant variety protection.

(d) An assignment, grant, conveyance or license shall be void as against any subsequent purchaser or mortgagee for a valuable consideration, without notice, unless it, or an acknowledgement thereof by the person giving such encumbrance that there is such encumbrance, is filed for recording in the Plant Variety Protection Office within one month from its date or at least one month prior to the date of such subsequent purchase or mortgage.

Sec. 102. Ownership During Testing.

An owner who, with notice that release is for testing only, releases possession of seed or other sexually reproducible plant material for testing retains ownership with respect thereto; and any diversion from authorized testing, or any unauthorized retention, of such material by anyone who has knowledge that it is under such notice, or who is chargeable with notice, is prohibited, and violates the property rights of the owner. Anyone receiving the material tagged or labeled with the notice is chargeable with the notice. The owner is entitled to remedy and redress in a civil action hereunder. No remedy available by State or local law is hereby excluded. No such notice shall be used, or if used be effective, when the owner has made identical sexually reproducible plant material available to the public, as by sale thereof.

Chapter 11.—INFRINGEMENT OF PLANT VARIETY PROTECTION

Sec. 111. Infringement of Plant Variety Protection.

Except as otherwise provided in this title, it shall be an infringement of the rights of the owner of a novel variety to perform without authority, any of the following acts in the United States, or in commerce which can be regulated by Congress or affecting such commerce, prior to expiration of the right to plant variety protection but after either the issue of the certificate or the distribution of a novel plant variety with the notice under section 127:

(1) sell the novel variety, or offer it or expose it for sale, deliver it, ship it, consign it,

exchange it, or solicit an offer to buy it, or any other transfer of title or possession of it;

(2) import the novel variety into, or export it from, the United States;

(3) sexually multiply the novel variety as a step in marketing (or growing purposes) the variety; or

(4) use the novel variety in producing (as distinguished from developing) a hybrid or different variety therefrom; or

(5) use seed which had been marked "propagation prohibited" or progeny thereof to propagate the novel variety; or

(6) dispense the novel variety to another, in a form which can be propagated, without notice as to being a protected variety under which it was received; or

(7) perform any of the foregoing acts even in instances in which the novel variety is multiplied other than sexually except in pursuance of a valid United States plant patent; or

(8) instigate or actively induce performance of any of the foregoing acts.

Sec. 112. Grandfather Clause.

Nothing in this Act shall abridge the right of any person, or his successor in interest, to reproduce or sell a variety developed and produced by such person more than one year prior to the effective filing date of an adverse application for a certificate of plant variety protection.

Sec. 113. Right to Save Seed; Crop Exemption.

Except to the extent that such action may constitute an infringement under subsections (3) and (4) of section 111, it shall not infringe any right hereunder for a person to save seed produced by him from seed obtained, or descended from seed obtained, by authority of the owner of the variety for seeding purposes and use on his farm, or for sale as provided in this section: *Provided*, That without regard to the provisions of section 111(3) it shall not infringe any right hereunder for a person, whose primary farming occupation is the growing of crops for sale for other than reproductive purposes, to sell such saved seed to other persons so engaged, for reproductive purposes, provided such sale is in compliance with such State laws governing the sale of seed as may be applicable. A bona fide sale for other than reproductive purposes, made in channels usual for such other purposes, of seed produced on a farm either from seed obtained by authority of the owner for seeding purposes or from seed produced by descent on such farm from seed obtained by authority of the owner for seeding purposes shall not constitute an infringement. A purchaser who diverts seed from such channels to seeding purposes shall be deemed to have notice under section 127 that his actions constitute an infringement.

Sec. 114. Research Exemption.

The use and reproduction of a protected variety for plant breeding or other bona fide research shall not constitute an infringement of the protection provided under this Act.

Sec. 115. Intermediary Exemption.

Transportation or delivery by a carrier in the ordinary course of its business as a carrier, or advertising by a person in the advertising business in the ordinary course of that business, shall not constitute an infringement of the protection provided under this Act.

Chapter 12.—REMEDIES FOR INFRINGEMENT OF PLANT VARIETY PROTECTION, AND OTHER ACTIONS

Sec. 121. Remedy for Infringement of Plant Variety Protection.

An owner shall have remedy by civil action for infringement of his plant variety protection under section 111. If a variety is sold under the name of a variety shown in

a certificate, there is a prima facie presumption that it is the same variety.

Sec. 122. Presumption of Validity; Defenses.

(a) Certificates of plant variety protection shall be presumed valid. The burden of establishing invalidity of a plant variety protection shall rest on the party asserting invalidity.

(b) The following shall be defenses in any action charging infringement and shall be pleaded: (1) noninfringement, absence of liability for infringement, or unenforceability; (2) invalidity of the plant variety protection in suit on any ground specified in section 42 of this title as a condition for protectability; (3) invalidity of the plant variety protection in suit for failure to comply with any requirement of section 52; (4) that the asserted infringement was performed under an existing certificate adverse to that asserted and prior to notice of the infringement; and (5) any other fact or act made a defense by this Act.

Sec. 123. Injunction.

The several courts having jurisdiction of cases under this title may grant injunctions in accordance with the principles of equity to prevent the violation of any right hereunder on such terms as the court deems reasonable.

Sec. 124. Damages.

(a) Upon finding an infringement the court shall award damages adequate to compensate for the infringement but in no event less than a reasonable royalty for the use made of the variety by the infringer, together with interest and costs as fixed by the court.

(b) When the damages are not determined by the jury, the court shall determine them. In either event the court may increase the damages up to three times the amount determined.

(c) The court may receive expert testimony as an aid to the determination of damages or of what royalty would be reasonable under the circumstances.

(d) As to infringement prior to, or resulting from a planting prior to, issuance of a certificate for the infringed variety, a court finding the infringer to have established innocent intentions, shall have discretion as to awarding damages.

Sec. 125. Attorney Fees.

The court in exceptional cases may award reasonable attorney fees to the prevailing party.

Sec. 126. Time Limitation on Damages.

(a) No recovery shall be had for that part of any infringement committed more than six years (or known to the owner more than one year) prior to the filing of the complaint or counterclaim for infringement in the action.

(b) In the case of claims against the United States Government for unauthorized use of a protected variety, the period between the date of receipt of written claim for compensation by the department or agency of the Government having authority to settle such claim, and the date of mailing by the Government of a notice to the claimant that his claim has been denied shall not be counted as part of the period referred to in the preceding paragraph.

Sec. 127. Limitation of Damages; Marking and Notice.

Owners may give notice to the public by physically associating with or affixing to the container of seed of a novel variety or by fixing to the novel variety, a label containing the words "Propagation Prohibited" and after the certificate issues, such additional words as "U.S. Protected Variety". In the event the novel variety is distributed by authorization of the owner and is received by the infringer without such marking, no damages shall be recovered against such in-

fringer by the owner in any action for infringement, unless the infringer has actual notice or knowledge that propagation is prohibited or that the variety is a protected variety, in which event damages may be recovered only for infringement occurring after such notice. As to both damages and injunction, a court shall have discretion to be lenient as to disposal of materials acquired in good faith by acts prior to such notice.

Sec. 128. False Marking; Cease and Desist Orders.

(a) Each of the following acts, if performed in connection with the sale, offering for sale, or advertising of sexually reproducible plant material, is prohibited, and the Secretary may, if he determines after an opportunity for hearing that the act is being so performed, issue an order to cease and desist, said order being binding unless appealed under section 71:

(1) Use of the words "U.S. Protected Variety" or any word or number importing that the material is a variety protected under certificate, when it is not.

(2) Use of any wording importing that the material is a variety for which an application for plant variety protection is pending, when it is not.

(3) Use of the phrase "propagation prohibited" or similar phrase without reasonable basis, a statement of this basis being promptly filed with the Secretary if the phrase is used beyond testing and no application has been filed. Any reasonable basis expires one year after the first sale of the variety except as justified thereafter by a pending application or a certificate still in force.

(b) Anyone convicted of violating a binding cease and desist order, or of performing any act prohibited in subsection (a) of this section for the purpose of deceiving the public, shall be fined not more than \$10,000 and not less than \$500.

(c) Anyone whose business is damaged or is likely to be damaged by an act prohibited in subsection (a) of this section, or is subjected to competition in connection with which such act is performed, may have remedy by civil action.

Sec. 129. Nonresident Proprietors; Service and Notice.

Every owner not residing in the United States may file in the Plant Variety Protection Office a written designation stating the name and address of a person residing within the United States on whom may be served process or notice of proceedings affecting the plant variety protection or rights thereunder. If the person designated cannot be found at the address given in the last designation, or if no person has been designated, the United States District Court for the District of Columbia shall have jurisdiction and summons shall be served by publication or otherwise as the court directs. The court shall have the same jurisdiction to take any action respecting the plant variety protection, or rights thereunder that it would have if the owner were personally within the jurisdiction of the court.

Chapter 13.—INTENT AND SEVERABILITY

Sec. 131. Intent

It is the intent of Congress to provide the indicated protection for new varieties by exercise of any constitutional power needed for that end, so as to afford adequate encouragement for research, and for marketing when appropriate, to yield for the public the benefits of new varieties. Constitutional clauses 3 and 8 of article I, section 8 are both relied upon.

Sec. 132. Severability.

If this Act is held unconstitutional as to some provisions or circumstances, it shall remain in force as to the remaining provisions and other circumstances.

Chapter 14.—TEMPORARY PROVISION AND RELATED ENACTMENTS; EXEMPTED PLANTS; MISCELLANEOUS

Sec. 141. Effective Date.

This Act shall take effect upon enactment. Applications may be filed with the Secretary and held by him until the Office of Plant Variety Protection is organized and in operation.

Sec. 142. Amendment of Federal Seed Act.

The Federal Seed Act (53 Stat. 1275) is amended as follows:

(a) By adding at the end thereof:

"TITLE V—SALE OF UNCERTIFIED SEED OF PROTECTED VARIETY

"Section 501.

"(a) It shall be unlawful in the United States or in interstate or foreign commerce to sell by variety name seed not certified by an official seed certifying agency when it is a variety for which a certificate of plant variety protection under the Plant Variety Protection Act specifies sale only as a class of certified seed: *Provided*, That seed from a certified lot may be labeled as to variety name when used in a mixture by, or with the approval of, the owner of the variety."

(b) By adding at the end of section 102 the following wording: "Seed of a variety for which a certificate of plant variety protection under the Plant Variety Protection Act specifies sale only as a class of certified seed shall be certified only when

"(1) the basic seed from which the variety was produced was furnished by authority of the owner of the variety if the certification is made during the term of protection, and

"(2) it conforms to the number of generations designated by the certificate, if the certificate contains such a designation."

Sec. 143. Amendment of Judicial Code.

Title 28 of the United States Code, entitled Judicial Code and Judiciary, is amended as follows:

(a) After section 1544 add:

"Sec. 1545. Decision of the Plant Variety Protection Office.

"The Court of Customs and Patent Appeals shall have nonexclusive jurisdiction of appeals under section 71 of the Plant Variety Protection Act."

(b) In section 1338 after "Patents" in the heading, after "patents" and after "patent" (both occurrences) insert ", plant variety protection".

(c) After section 2351 add:

2353. The Court of appeals has nonexclusive jurisdiction to hear appeals under section 72 of the Plant Variety Protection Act.

Sec. 144. Exempted Plants.

The provisions of this Act shall not apply to the seeds, plants, or transplants of okra, celery, peppers, tomatoes, carrots, and cucumbers.

Sec. 145. Short Title.

This Act may be cited as the "Plant Variety Protection Act".

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 91-1246), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

PURPOSE

This bill as amended provides for the issuance of "certificates of plant variety protection" assuring the developers of novel varieties of sexually reproduced plants of exclusive rights to sell, reproduce, import, or export such varieties, or use them in the production (as distinguished from the development) of hybrids or different varieties, for

a period of 17 years. A Plant Variety Protection Office would be established in the Department of Agriculture to administer the law. Similar protection is now provided for sexually reproduced varieties through patents issued by the Patent Office.

STATEMENT

During the hearings by this committee's Subcommittee on Patents, Trademarks, and Copyrights on the legislation providing for a general revision of the patent laws, consideration was given to an amendment of the plant patent section of the patent law. Under the patent law, patent protection is limited to those varieties of plants which reproduce asexually, that is, by such methods as grafting or budding. No protection is available to those varieties of plants which reproduce sexually, that is, generally by seeds. Thus, patent protection is not available with respect to new varieties of most of the economically important agricultural crops, such as cotton or soybeans. The Patent Subcommittee conducted hearings on February 1, 1968, on an amendment to broaden the scope of plant patent protection so as to apply to sexually reproduced plants. A number of objections to this proposal were advanced during the hearings, and no further action in that area has been taken by the subcommittee.

Subsequently, legislation was introduced to encourage the development of novel varieties of sexually reproduced plants by the issuance of certificates of plant variety protection by the Department of Agriculture. S. 3070, to establish such protection, was reported by the Committee on Agriculture and Forestry, and on August 24 this legislation was referred to this committee for the purpose of reviewing its impact on the plant patent statute. The committee accordingly has examined S. 3070 and finds that it does not alter protection currently available within the patent system. The committee recommends the bill, S. 3070, favorably as amended.

THE SENATE SETS A RECORD ON ROLLCALL VOTES

Mr. MANSFIELD. Mr. President, the vote completed earlier this week on the military construction authorization bill marks the 322d rollcall vote of the second session of the 91st Congress.

Insofar as I have been able to ascertain, that is the highest number of record call votes ever registered by the Senate in any session of Congress in the Nation's history. During the years 1933 through 1969, the years in which the Senate has come closest to approaching that number were 1967 when there were 315 rollcall votes, 1964 when the total was 312, and 1968 when 280 votes were taken.

I ask unanimous consent, Mr. President, that at the conclusion of my remarks a list of the rollcall votes since 1933, by year and by session, be printed in the RECORD.

The ACTING PRESIDENT pro tempore. Without objection it is so ordered. (See exhibit 1.)

Mr. MANSFIELD. In my opinion, the Senate has been—and continues to be—in the process of forming a most respectable record of legislative accomplishments this year. That there have been thus far in 1970 322 issues on which the votes of Senators have been counted in an unimpeachable way is, I believe, a strong indication of the attentiveness

Senators have given to the agenda of the 91st Congress.

May I say, furthermore, that at the second session of the 91st Congress the average hours of attendance for the 162 days we have been in session has been 7 hours a day. This is in addition to looking after the needs of constituents, meeting with various groups, performing chores downtown, meeting in committees, and attending to the numerous other duties and responsibilities which happen to be a Senator's lot.

EXHIBIT 1

TOTAL ROLLCALL VOTES

Year	Congress	Session	Total votes
1969	91st	1st	245
1968	90th	2d	280
1967	90th	1st	315
1966	89th	2d	238
1965	89th	1st	259
1964	88th	2d	312
1963	88th	1st	229
1962	87th	2d	227
1961	87th	1st	207
1960	86th	2d	207
1959	86th	1st	216
1958	85th	2d	202
1957	85th	1st	111
1956	84th	2d	135
1955	84th	1st	88
1954	83d	2d	181
1953	83d	1st	88
1952	82d	2d	129
1951	82d	1st	202
1950	81st	2d	229
1949	81st	1st	226
1948	80th	2d	110
1947	80th	1st	137
1946	79th	2d	142
1945	79th	1st	105
1944	78th	2d	95
1943	78th	1st	120
1942	77th	2d	95
1941	77th	1st	96
1940	76th	2d	151
1939	76th	1st	112
1938	75th	3d	81
1937	75th	1st and 2d	91
1936	74th	2d	67
1935	74th	1st	132
1934	73d	2d	122
1933	73d	1st	98

Mr. SCOTT. If the distinguished majority leader will yield, I think, too, that the Senate has done a great deal of work in this session and has passed a great many bills. There are some things which still remain to be done with some matters pending between the two Houses, as well as some matters which we may not be able to finish, much as we would like to.

But I detect, I think, in the sentiment of the public some of the same feeling expressed by Cromwell at the end of the long Parliament that he had attended when he said something like this: "Gentlemen, in the name of God, go."

I rather think that the public is in Cromwell's position in wishing that, in the name of God, we would go home.

Mr. MANSFIELD. I would agree with the distinguished Republican leader with only this stipulation, that the people's business be done first, and I am sure that it will be.

Mr. SCOTT. So far as the people's business can be effectively transacted, I am in sympathy.

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. At this time, in accordance with

the previous order, the Chair recognizes the distinguished Senator from Illinois (Mr. PERCY) for not to exceed 15 minutes.

NATO BURDENSARING

Mr. PERCY. Mr. President, yesterday in Brussels, the defense ministers of European NATO countries agreed in principle that they will have to assume a greater share of NATO's costs if a large-scale withdrawal of U.S. troops from Europe is to be prevented. They agreed that burdensharing would be necessary.

This recognition is long overdue. For 25 years the United States has provided an exorbitant share of the men and money to defend Europe. Today, 25 years after the end of World War II, 300,000 American troops plus several hundred thousand dependents are still in Western Europe at an annual cost in Europe of \$3 billion, of which \$1.5 billion is a balance-of-payments loss to the United States. The total allocation of the Department of Defense budget to NATO forces is \$14 billion a year, including both troops in Europe and those stationed here assigned for NATO backup.

As it stands now, each European NATO country will decide what it can contribute. These contributions will be put together into a total package at the next meeting of the NATO defense ministers in November, and then presented to our Government as a basis for discussion.

However, there is one part of the report coming out of Brussels that is totally unrealistic. Although no specific dollar figures were agreed upon, sources at the defense ministers' meeting were quoted as saying that a "realistic" figure would be in the neighborhood of \$300 million annually. This figure is so totally inadequate that it would seem to insure a substantial withdrawal of U.S. troops from NATO after July 1, 1971, when current financial arrangements come to an end. The \$300 million would cover only one-fifth of the U.S. balance-of-payments drain alone associated with NATO and only one-tenth of our direct costs in Europe. It represents 2.2 percent of our total NATO commitment.

Unless European NATO countries contribute a minimum of \$1.5 billion to at least cover the balance-of-payments costs of U.S. forces in Europe beginning July 1, 1971, I shall support reduction of our commitment in Europe. For 2 years I have been urging greater European financial assistance for U.S. forces in Europe on the basis that if such help was not forthcoming, the United States would be forced to withdraw troops. I have been withholding support for moves to reduce troops now in hopes of getting a realistic financial arrangement. But the offer of \$300 million is grossly inadequate.

There are two courses open at the moment. Either European countries substantially up the ante at their next meeting in November or the U.S. Congress will solve the financial problem in the fiscal 1972 budget of the Department of Defense next year.

Mr. President, I ask unanimous consent that an article from this morning's Washington Post be printed in the RECORD at this point.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

ALLIES PLAN EXPANDED NATO AID
(By John M. Goshko)

BRUSSELS, October 1.—European members of NATO agreed today in principle that they will have to assume a greater share of the alliance's defense burden as a means of preventing large-scale withdrawal of U.S. troops from Europe.

However, the informal meeting of defense ministers from ten NATO nations did not achieve a common definition of what they mean by "burden sharing" or the best way of translating it into action. There seemed to be two schools of thought about how to approach the problem.

One, led by West Germany, favors a system of financial contributions to help defray the costs of stationing more than 300,000 U.S. servicemen in Europe. The other idea, advanced chiefly by Britain, is that the European NATO members should increase their own individual contributions of men and materiel to the total NATO force.

In the end, the participants decided on a compromise formula that would round up the specific contributions each is willing to make into an overall package and then present it to Washington as a basis for further discussion.

While conceding that the formula is somewhat vague and diffuse, sources at the meeting argued that it represents a necessary first step in coming to grips with the problem of burden sharing.

They outlined a plan under which representatives of the participating countries and NATO Secretary General Manlio Brosio would work out a draft of the package proposal.

The tentative idea is to have this draft reviewed and approved at another ministerial-level meeting in November and then to communicate it to U.S. Defense Secretary Melvin R. Laird for Washington's reaction by the beginning of December.

Although conference spokesmen insisted it was still too early to say how much money might be involved, some sources said it would be "realistic" to talk in terms of a joint European commitment totaling up to \$300 million.

Whatever the final figure, it is generally expected that the biggest share will be assumed by West Germany, which has most of the U.S. troops in Europe on its soil. The Bonn government is known to be especially anxious to prevent any sizable reduction of U.S. forces, and some German sources hinted that Bonn would be willing to pay half of the \$300 million figure being mentioned.

Today's meeting was brought about largely through the initiative of West German Defense Minister Helmut Schmidt. The West Germans, aware of growing pressures in the U.S. Congress for force reductions in Europe, have come around to the idea that direct budget support for U.S. troops is essential if NATO strength is to be kept close to present levels.

The West Germans envision a system under which NATO members would either make direct payments toward the upkeep of U.S. troops or increase the percentage they pay in so-called infrastructure costs—those relating to salaries for European civilian employees, installations and utilities.

The British counter by arguing that the demand in the United States for reductions is dictated less by budgetary considerations than by a feeling that the Europeans are not making the maximum possible contribution to their own defense.

The British say this objection can best be overcome by individual NATO members contributing more of their own armed forces personnel and equipment. British sources said the Heath government was studying how Britain could best fulfill this aim.

Referring to the differences, the Netherlands defense minister, Willem den Toom, who chaired today's meeting, said: "We don't want to strengthen our defense if it means a reduction of the U.S. presence in Europe."

"There is agreement among us that the U.S. must be kept in Europe, and we know that we should lighten their burden. Some elements in the United States are urging a cut down of the U.S. effort in Europe. It is also known that the administration is against this, but we have found the situation imperative enough to get together on the cost problem."

"We have reached no decision, but the result is that everybody is positive toward burden sharing—even those who cannot go beyond a symbolic gesture."

Taking part in today's meeting were West Germany, Britain, Italy, the Netherlands, Denmark, Norway, Greece, Belgium, Turkey and Luxembourg. Neither Portugal nor France, which has withdrawn from participation in the military aspects of NATO, attended.

U.S. sources estimate that the over-all annual cost of the U.S. commitment to NATO, including forces both in Europe and the United States, is \$14 billion. The total cost to the United States for that portion of its NATO forces actually stationed in Europe comes to approximately \$7 billion annually.

LEAD PAINT POISONING

Mr. PERCY. Mr. President, during the past week, the Select Committee on Nutrition and Human Needs, of which I am a member, has been studying the problem of lead paint poisoning.

At least 40 children have died in Chicago since 1966 from lead paint poisoning, mostly children living among the broken and crumbling walls of tenements. Every week about 10 new lead poison victims are discovered in Chicago. There are more cases of brain damage from lead poisoning in New York City than there were from measles before immunization programs began. There are more deaths and permanent cripples from it each year than there were in an average polio year prior to widespread immunization against that disease.

Because of this grave problem, I would like to share with my distinguished colleagues some enlightening articles on the subject of lead poisoning written by Mrs. Lois Wille of the Chicago Daily News. Mrs. Wille was recently named winner of the Illinois Associated Press Editors Association's top award for writing the best feature series of 1969. Mrs. Wille's work is a credit not only to her paper and her profession, but a great service to public information.

I ask unanimous consent to have these informative and thought-provoking articles printed in the RECORD.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

LEAD POISONING CASES: SLUMLORD PROSECUTION URGED
(By Lois Wille)

A housing official Tuesday urged State's Atty. Edward V. Hanrahan to prosecute landlords who refuse to repair lead-poisoned buildings.

"Some of these fellows ought to be jailed," said Victor Spallone, director of housing for the Cook County Public Aid Department.

A 1966 state statute provides that a landlord found guilty of criminal housing management can be fined \$1,000 and sent to jail for six months.

"It has never been used in a lead poisoning case," Spallone said. "Yet there are many examples of an owner's gross carelessness and greed destroying a child."

In the five years since the law was passed, at least 39 Chicago children have died from eating lead-based paint and plaster in deteriorating buildings.

Many more were left mentally retarded or with severe behavior problems from the brain-crippling lead chips.

Lead-based paint on interior walls and peeling paint and plaster are city housing code violations, but Housing Court has had little success in forcing owners to comply with the law.

A recent investigation by The Daily News showed that walls were repaired in only one of 20 lead poisoning cases, some dating back to 1967.

"At the same time Building Department officials send these lead poisoning cases to Housing Court, they should also send them to the state's attorney for prosecution," Spallone said.

But the only long-range method of wiping out the disease is massive new construction, he added, "to get people out of dangerous housing."

The mother of one of the lead-poison victims interviewed by The Daily News has been on a waiting list to get into public housing for seven years.

City health Comr. Murray C. Brown said that Housing Court, with its backlog of 9,500 cases, "is a completely dissatisfactory method" of preventing lead poisoning.

"STEP TOWARD COMMUNISM": HITS TALK OF FIXING POISONED WALLS

(By Lois Wille)

Any city program to repair lead-poisoned buildings could be "one more step toward communism," Building Comr. Joseph Fitzgerald said Wednesday.

He warned of the dangers he sees in New York's new policy of covering peeling walls in flats where children have been poisoned.

"If the city is going to start doing repairs on buildings—I don't think our forefathers would have intended this," Fitzgerald said.

Chicago Health Department crews make emergency repairs in rat-infested buildings, but Fitzgerald said he would not want them to branch out into repair of lead-poisoned walls.

"It seems one more step toward communism or socialism—another step in that direction," he explained.

In general, according to Fitzgerald, there is little that can be done to remove the source of the brain-crippling disease.

He is opposed to city-initiated repair work, and when asked if he had any suggestions for forcing owners to repair their slums, he replied:

"That would be the answer to the whole housing problem. If I had that answer, I'd be running for President."

Pediatricians, backed by the American Academy of Pediatrics and the U.S. Public Health Service, maintain that lead poisoning will continue to destroy the minds of thousands of children unless slums are repaired.

Young children with "pica"—abnormal appetite—are likely to nibble paint and plaster chips. The lead is stored in their brains, and eventually can cause retardation or severe behavior problems.

In Chicago, 5 to 10 lead poison cases are discovered every week. Pediatricians complain that after treatment most of the chil-



91ST CONGRESS
2D SESSION

S. 3070

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 5, 1970

Referred to the Committee on Agriculture

AN ACT

To encourage the development of novel varieties of sexually reproduced plants and to make them available to the public, providing protection available to those who breed, develop, or discover them, and thereby promoting progress in agriculture in the public interest.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

INDEX

	Section
TITLE I —Plant Variety Protection Office-----	1
TITLE II —Protectability of Plant Varieties and Certificates of Protection -----	41
TITLE III—Plant Variety Protection and Rights-----	101

3 TITLE I—PLANT VARIETY PROTECTION OFFICE

Chapter	Section
1. Organization and Publications-----	1
2. Legal Provisions as to the Plant Variety Protection Office-----	21
3. Plant Variety Protection Fees-----	31

1 **Chapter 1.—ORGANIZATION AND PUBLICATIONS**

2 **Section 1. Establishment.**

3 There is hereby established in the Department of Agri-
4 culture a bureau to be known as the Plant Variety Protec-
5 tion Office, which shall have the functions set forth in this
6 Act.

7 **Sec. 2. Seal.**

8 The Plant Variety Protection Office shall have a seal
9 with which documents and certificates evidencing plant
10 variety protection shall be authenticated.

11 **Sec. 3. Organization.**

12 The organization of the Plant Variety Protection Office
13 shall, except as provided herein, be determined by the Secre-
14 tary of Agriculture (hereinafter called the Secretary). The
15 office shall devote itself substantially exclusively to the
16 administration of this Act.

17 **Sec. 4. Restrictions on Employees as to Interest in Plant**
18 **Variety Protection.**

19 Employees of the Plant Variety Protection Office shall
20 be ineligible during the periods of their employment, to apply
21 for plant variety protection and to acquire directly or in-
22 directly, except by inheritance or bequest, any right or
23 interest in any matters before that office. This section shall
24 not apply to members of the Plant Variety Protection Board

1 who are not otherwise employees of the Plant Variety Protec-
2 tion Office.

3 **Sec. 5. Bond of Employees.**

4 Such employees as the Secretary designates, before enter-
5 ing upon their duties, shall severally give bond, with sureties,
6 in sums prescribed by the Secretary, conditioned for the
7 faithful discharge of their respective duties and that they
8 shall render to the proper officers of the Treasury a true
9 account of all money received by virtue of their offices.

10 **Sec. 6. Regulations.**

11 The Secretary may establish regulations, not inconsistent
12 with law, for the conduct of proceedings in the Plant Variety
13 Protection Office after consultations with the Plant Variety
14 Protection Board.

15 **Sec. 7. Plant Variety Protection Board.**

16 (a) APPOINTMENT.—The Secretary shall appoint a
17 Plant Variety Protection Board. The Board shall consist
18 of individuals who are experts in various areas of varietal
19 development covered by this Act. Membership of the Board
20 shall include farmer representation and shall be drawn ap-
21 proximately equally from the private or seed industry sector
22 and from the sector of government or the public. The Secre-
23 tary or his designee shall act as chairman of the Board
24 without voting rights except in the case of ties.

1 (b) FUNCTIONS OF BOARD.—The functions of the
2 Plant Variety Protection Board shall include:

3 (1) Advising the Secretary concerning the adop-
4 tion of Rules and Regulations to facilitate the proper
5 administration of this Act;

6 (2) Making advisory decisions on all appeals from
7 the examiner. The Board shall determine whether to act
8 as a full Board or by panels it selects; and whether to
9 review advisory decisions made by a panel. For service
10 on such appeals, the Board may select, as temporary
11 members, experts in the area to which the particular
12 appeal relates; and

13 (3) Advising the Secretary on all questions under
14 section 44.

15 (c) COMPENSATION OF BOARD.—The members of the
16 Plant Variety Protection Board shall serve without compen-
17 sation except for standard government reimbursable expenses.

18 **Sec. 8. Library.**

19 The Secretary shall maintain a library of scientific
20 and other works and periodicals, both foreign and domestic,
21 in the Plant Variety Protection Office to aid the officers in
22 the discharge of their duties.

23 **Sec. 9. Register of Protected Plant Varieties.**

24 The Secretary shall maintain a register of published
25 specifications of United States protected plant varieties and

1 a file of such other scientific and technical information as may
2 be necessary or practicable.

3 **Sec. 10. Publications.**

4 (a) The Secretary may publish, or cause to be pub-
5 lished, in such format as he shall determine to be suitable, the
6 following:

7 (1) The specifications for plant variety protection
8 including drawings and photographs.

9 (2) The Official Journal of the Plant Variety Pro-
10 tection Office, including annual indices.

11 (3) Pamphlet copies of the plant variety protection
12 laws and rules of practice and circulars or other publi-
13 cations relating to the business of the Office.

14 (b) The Plant Variety Protection Office may print the
15 heading of the drawings or photographs for protected plant
16 varieties for the purpose of photolithography and may pro-
17 vide suitable copy for any lithography to appear on the
18 same page.

19 (c) The Secretary may (1) establish public facilities for
20 the searching of plant variety protection records and materi-
21 als, and (2) from time to time, as through an information
22 service, disseminate to the public those portions of the tech-
23 nological and other public information available to or within
24 the Plant Variety Protection Office to encourage innovation
25 and promote the progress of the useful arts.

(d) The Secretary may exchange any of the publications specified for publications desirable for the use of the Plant Variety Protection Office. The Secretary may exchange copies of specifications, drawings, and photographs of United States protected plant varieties for copies of specifications, drawings, and photographs of applications and protected plant varieties of foreign countries.

Sec. 11. Copies for Public Libraries.

The Secretary may supply printed copies of specifications, drawings, and photographs of protected plant varieties to public libraries in the United States which shall maintain such copies for the use of the public.

Chapter 2.—LEGAL PROVISIONS AS TO THE PLANT VARIETY PROTECTION OFFICE

Sec. 21. Day for Taking Action Falling on Saturday, Sunday, or Holiday.

When the day, or the last day, for taking any action or paying any fee in the United States Plant Variety Protection Office falls on Saturday, Sunday, a holiday within the District of Columbia, or on any other day the Plant Variety Protection Office is closed for the receipt of papers, the action may be taken or the fee paid, on the next succeeding business day.

Sec. 22. Form of Papers Filed.

The Secretary may by regulations prescribe the form of papers to be filed in the Plant Variety Protection Office.

1 **Sec. 23. Testimony in Plant Variety Protection Office**
2 **Cases.**

3 The Secretary may establish regulations for taking affi-
4 davits, depositions, and other evidence required in cases be-
5 fore the Plant Variety Protection Office. Any officer author-
6 ized by law to take depositions to be used in the courts of the
7 United States, or of the State where he resides, may take
8 such affidavits and depositions, and swear the witnesses. If
9 any person acts as a hearing officer by authority of the Secre-
10 tary, he shall have like power.

11 **Sec. 24. Subpenas, Witnesses.**

12 (a) The clerk of any United States court for the district
13 wherein testimony is to be taken in accordance with regula-
14 tions established by the Secretary for use in any contested
15 case in the Plant Variety Protection Office shall, upon the
16 application of any party thereof, issue a subpoena for any
17 witness residing or being within such district or within one
18 hundred miles of the stated place in such district, command-
19 ing him to appear and testify before an officer in such district
20 authorized to take depositions and affidavits, at the time and
21 place stated in the subpoena. The provisions of the Federal
22 Rules of Civil Procedure relating to the attendance of wit-
23 nesses and the production of documents and things shall apply
24 to contested cases in the Plant Variety Protection Office
25 insofar as consistent with such regulations.

1 (b) Every witness subpoenaed or testifying shall be al-
2 lowed the fees and traveling expenses allowed to witnesses
3 attending the United States district courts.

4 (c) A judge of a court whose clerk issued a subpoena
5 may enforce obedience to the process or punish disobedience
6 as in other like cases, on proof that a witness, served with
7 such subpoena, neglected or refused to appear or to testify.
8 No witness shall be deemed guilty of contempt for disobeying
9 such subpoena unless his fees and traveling expenses in going
10 to, and returning from, one day's attendance at the place
11 of examination, are paid or tendered him at the time of the
12 service of the subpoena; nor for refusing to disclose any
13 secret matter except upon appropriate order of the court
14 which issued the subpoena or of the Secretary.

15 **Sec. 25. Effect of Defective Execution.**

16 Any document to be filed in the Plant Variety Protec-
17 tion Office and which is required by any law or regulation to
18 be executed in a specified manner may be provisionally ac-
19 cepted by the Secretary despite a defective execution, pro-
20 vided a properly executed document is submitted within such
21 time as may be prescribed.

22 **Sec. 26. Regulations for Practice Before the Office.**

23 The Secretary shall prescribe regulations governing the
24 admission to practice and conduct of persons representing
25 applicants or other parties before the Plant Variety Pro-

tection Office. The Secretary may, after notice and opportunity for a hearing, suspend or exclude, either generally or in any particular case, from further practice before the Office of Plant Variety Protection any person shown to be incompetent or disreputable or guilty of gross misconduct.

Sec. 27. Unauthorized Practice.

Anyone who in the United States engages in direct or indirect practice before the Office of Plant Variety Protection while suspended or excluded under section 26, or without being admitted to practice before the Office, shall be liable in a civil action for the return of all money received, and for compensation for damage done by such person and also may be enjoined from such practice. However, there shall be no liability for damage if such person establishes that the work was done competently and without negligence. This section does not apply to anyone who, without a claim of self-sufficiency, works under the supervision of another who stands admitted and is the responsible party; nor to anyone who establishes that he acted only on behalf of any employer by whom he was regularly employed.

Chapter 3.—PLANT VARIETY PROTECTION FEES

Sec. 31. Plant Variety Protection Fees; Appropriations.

The Secretary shall, under such regulations as he may prescribe, charge and collect reasonable fees for services performed under this Act. The fees authorized by this section

1 shall be established to substantially cover the costs of admin-
 2 istration of this Act. Such fees shall be deposited into a fund
 3 to be available, without fiscal year limitation, for the admin-
 4 istration of this Act. The initial capital of the fund shall con-
 5 sist of appropriations, which are hereby authorized to be
 6 made. Until such time as the Secretary prescribes fees as
 7 provided by this section, a fee of \$50 shall be charged for
 8 filing each application, subject to such adjustment as may be
 9 appropriate after fees are prescribed by the Secretary
 10 hereunder.

11 **Sec. 32. Payment of Plant Variety Protection Fees; Re-**
 12 **turn of Excess Amounts.**

13 All fees shall be paid to the Secretary, and the Secretary
 14 may refund any sum paid by mistake or in excess of the fee
 15 required.

16 **TITLE II—PROTECTABILITY OF PLANT VARIETIES**
 17 **AND CERTIFICATES OF PROTECTION**

Chapter	Section
4. Protection of Plant Varieties.....	41
5. Applications: Form, Who May File, Relating Back, Confiden- tiality	51
6. Examination: Response Time, Initial Appeals.....	61
7. Appeals to Courts and Other Review.....	71
8. Certificates of Plant Variety Protection.....	81
9. Reexamination After Issue, and Contested Proceedings.....	91

18 **Chapter 4.—PROTECTABILITY OF PLANT**
 19 **VARIETIES**

20 **Sec. 41. Definitions and Rules of Construction.**

21 The definitions and rules of construction set forth in this
 22 section apply for the purposes of this Act.

1 (a) The term "novel variety" may be represented by,
2 without limitation, seed, transplants, and plants, and is satis-
3 fied if there is:

4 (1) Distinctness in the sense that the variety clearly
5 differs by one or more identifiable morphological, physio-
6 logical or other characteristics (which may include those
7 evidenced by processing or product characteristics, for
8 example, milling and baking characteristics in the case
9 of wheat) as to which a difference in genealogy may
10 contribute evidence, from all prior varieties of public
11 knowledge at the date of determination within the pro-
12 visions of section 42; and

13 (2) Uniformity in the sense that any variations are
14 describable, predictable and commercially acceptable;
15 and

16 (3) Stability in the sense that the variety, when
17 sexually reproduced or reconstituted, will remain un-
18 changed with regard to its essential and distinctive char-
19 acteristics with a reasonable degree of reliability com-
20 mensurate with that of varieties of the same category in
21 which the same breeding method is employed.

22 (b) The terms "United States" and "this country"
23 mean the United States of America, its territories and posses-
24 sions, and the Commonwealth of Puerto Rico.

25 (c) The term "kind" means one or more related species

1 or subspecies singly or collectively known by one common
2 name, for example, soybean, flax, or radish.

3 (d) The term "date of determination" means the date
4 when there has been at least tentative determination that
5 the variety has been sexually reproduced with recognized
6 characteristics, whether or not the novelty of those char-
7 acteristics has been determined.

8 (e) The term "breeder" shall mean the person who—

9 (1) directs the final breeding creating the novel
10 variety, or

11 (2) discovers the novel variety, and

12 makes the tentative determination described in subsection

13 (d). Where such actions are conducted by an agent on
14 behalf of his principal, the principal, rather than the agent,
15 shall be considered the breeder. The terms "breed", "de-
16 velop", "originate", and "discover", and derivatives thereof
17 shall each include the other.

18 (f) The term "sexually reproduced" shall include any
19 production of a variety by seed.

20 (g) The term "basic seed" means the seed planted to
21 produce certified or commercial seed.

22 (h) The term "testing" means testing or experimental
23 use of a variety before any sale thereof. Sale for other than
24 seed purposes of seed or other plant material produced as the
25 result of testing shall not constitute a sale for the purpose of

1 the preceding sentence or for the purpose of the following
2 subsection.

3 (i) The term “public variety” means a variety sold or
4 used in this country, or existing in and publicly known in
5 this country; but use for the purpose of testing, or sale or
6 use as individual plants not known to be sexually repro-
7 ducible, shall not make the variety a public variety.

8 (j) A variety described in a publication as specified in
9 section 42 (a) (1) (B) is “effectively available to workers in
10 this country” if a source from which it can be purchased is
11 indicated in such publication or readily determinable or if
12 such publication teaches how to produce the variety from
13 source-material effectively available to workers in this
14 country.

15 **Sec. 42. Right to Plant Variety Protection; Plant Varieties**
16 **Protectable.**

17 (a) The breeder of any novel variety of sexually re-
18 produced plant (other than fungi, bacteria, or first genera-
19 tion hybrids) who has so reproduced the variety, or his
20 successor in interest, shall be entitled to plant variety pro-
21 tection therefor, subject to the conditions and requirements
22 of this title unless one of the following bars exists:

23 (1) Before the date of determination thereof by the
24 breeder, or more than one year before the effective filing
25 date of the application therefor, the variety was (A) a

1 public variety in this country, or (B) effectively avail-
2 able to workers in this country and adequately described
3 by a publication reasonably deemed a part of the public
4 technical knowledge in this country which description
5 must include a disclosure of the principal characteristics
6 by which the variety is distinguished.

7 (2) An application for protection of the variety
8 based on the same breeder's acts, was filed in a foreign
9 country by the owner or his privies more than one year
10 before the effective filing date of the application filed in
11 the United States.

12 (3) Another is entitled to an earlier date of de-
13 termination for the same variety and such other (A)
14 has a certificate of plant variety protection hereunder
15 or (B) has been engaged in a continuing program of
16 development and testing to commercialization, or (C)
17 has within six months after such earlier date of deter-
18 mination adequately described the variety by a publica-
19 tion reasonably deemed a part of the public technical
20 knowledge in this country which description must in-
21 clude a disclosure of the principal characteristics by
22 which the variety is distinguished.

23 (b) The Secretary may, by regulation, extend for a
24 reasonable period of time the one year time period provided
25 in subsection (a) for filing applications, and may in that

1 event provide for at least commensurate reduction of the
2 term of protection.

3 **Sec. 43. Reciprocity Limits.**

4 Protection under the Act may, by regulation, be limited
5 to nationals of the United States, except where this limitation
6 would violate a treaty and except that nationals of a foreign
7 state in which they are domiciled shall be entitled to so much
8 of the protection here afforded as is afforded by said foreign
9 state to nationals of the United States for the same genus
10 and species.

11 **Sec. 44. Public Interest In Wide Usage.**

12 The Secretary may declare a protected variety open to
13 use on a basis of equitable remuneration to the owner, not
14 less than a reasonable royalty, when he determines that such
15 declaration is necessary in order to insure an adequate sup-
16 ply of fiber, food, or feed in this country and that the owner
17 is unwilling or unable to supply the public needs for the
18 variety at a price which may reasonably be deemed fair.
19 Such declaration may be, with or without limitation, with or
20 without designation of what the remuneration is to be; and
21 shall be subject to review as under section 71 or 72 (any
22 finding that the price is not reasonable being reviewable),
23 and shall remain in effect not more than two years. In the
24 event litigation is required to collect such remuneration, a
25 higher rate may be allowed by the court.

1 Chapter 5.—APPLICATIONS: FORM, WHO MAY FILE,
2 RELATING BACK, CONFIDENTIALITY

3 Sec. 51. Application for Recognition of Plant Variety
4 Rights.

5 (a) An application for a certificate of Plant Variety
6 Protection may be filed by the owner of the variety sought to
7 be protected. The application shall be made in writing to the
8 Secretary, shall be signed by or on behalf of the applicant,
9 and shall be accompanied by the prescribed fee.

10 (b) An error as to the naming of the breeder, without
11 deceptive intent, may be corrected at any time, in accordance
12 with regulations established by the Secretary.

13 Sec. 52. Content of Application.

14 An application for a certificate recognizing plant variety
15 rights shall contain:

16 (1) The name of the variety except that a tempo-
17 rary designation will suffice until the certificate is to be
18 issued.

19 (2) A description of the variety setting forth its
20 novelty and a description of the genealogy and breeding
21 procedure, when known. The Secretary may require
22 amplification, including the submission of adequate pho-
23 tographs or drawings or plant specimens, if the descrip-
24 tion is not adequate or as complete as is reasonably pos-
25 sible, and submission of records or proof of ownership

1 or of allegations made in the application. An applicant
2 may add to or correct the description at any time, before
3 the certificate is issued, upon a showing acceptable to the
4 Secretary that the revised description is retroactively
5 accurate. Courts shall protect others from any injustice
6 which would result. The Secretary may accept records
7 of the breeder and of any official seed certifying agency
8 in this country as evidence of stability where applicable.

9 (3) A declaration that a viable sample of basic
10 seed necessary for propagation of the variety will be
11 deposited and replenished periodically in a public reposi-
12 tory in accordance with regulations to be established
13 hereunder. This declaration may be added by
14 amendment.

15 (4) A statement of the basis of applicant's
16 ownership.

17 **Sec. 53. Joint Breeders.**

18 (a) When two or more persons are the breeders, one
19 (or his successor) may apply, naming the others.

20 (b) The Secretary, after such notice as he may pre-
21 scribe, may issue a certificate of plant variety protection to
22 the applicant and such of the other breeders (or their suc-
23 cessors in interest) as may have subsequently joined in the
24 application.

1 **Sec. 54. Death or Incapacity of Breeder.**

2 Legal representatives of deceased breeders and of those
3 under legal incapacity may make application for plant vari-
4 ety protection upon compliance with the requirements and
5 on the same terms and conditions applicable to the breeder
6 or his successor in interest.

7 **Sec. 55. Benefit of Earlier Filing Date.**

8 (a) An application for a certificate of plant variety
9 protection filed in this country based on the same variety,
10 and on rights derived from the same breeder, on which
11 there has previously been filed an application for plant
12 variety protection in a foreign country which affords similar
13 privileges in the case of applications filed in the United
14 States by nationals of the United States, shall have the same
15 effect as the same application would have if filed in the
16 United States on the date on which the application for plant
17 variety protection for the same variety was first filed in
18 such foreign country, if the application in this country is
19 filed within twelve months from the earliest date on which
20 such foreign application was filed. No application shall be
21 entitled to a right of priority under this section, unless the
22 applicant designates the foreign application in his appli-
23 cation or by amendment thereto and, if required by the
24 Secretary, furnishes such copy, translation or both, as the
25 Secretary may specify.

1 (b) An application for a certificate of plant variety pro-
2 tection for the same variety as was the subject of an applica-
3 tion previously filed in the United States by or on behalf of
4 the same person, or by his predecessor in title, shall have the
5 same effect as to such variety as though filed on the date of
6 the prior application if filed before the issuance of the certifi-
7 cate or other termination of proceedings on the first appli-
8 cation or on an application similarly entitled to the benefit of
9 the filing date of the first application and if it contains or is
10 amended to contain a specific reference to the earlier filed
11 application.

12 (c) A later application shall not by itself establish that
13 a characteristic newly described was in the variety at the
14 time of the earlier application.

15 **Sec. 56. Confidential Status of Application.**

16 Applications for plant variety protection and their con-
17 tents shall be kept in confidence by the Plant Variety Pro-
18 tection Office, by the Board, and by the offices in the Depart-
19 ment of Agriculture to which access may be given under
20 regulations. No information concerning the same shall be
21 given without the authority of the owner, unless necessary
22 under special circumstances as may be determined by the
23 Secretary, except that the Secretary may publish the variety
24 names designated in applications, stating the kind to which
25 each applies.

1 **Sec. 57. Publication.**

2 The Secretary may establish regulations for the publica-
3 tion of any pending application when publication is requested
4 by the owner.

5 **Chapter 6.—EXAMINATION, RESPONSE TIME,**
6 **INITIAL APPEALS**

7 **Sec. 61. Examination of Application.**

8 The Secretary shall cause an examination to be made of
9 the application and if on such examination it is determined
10 that the applicant is entitled to plant variety protection under
11 the law, the Secretary shall issue a notice of allowance of
12 plant variety protection therefor as hereinafter provided.

13 **Sec. 62. Notice of Refusal; Reconsideration.**

14 (a) Whenever an application is refused, or any objection
15 or requirement made by the examiner, the Secretary shall
16 notify the applicant thereof, stating the reasons therefor, to-
17 gether with such information and references as may be useful
18 in judging the propriety of continuing the prosecution of the
19 application; and if after receiving such notice the applicant
20 requests reconsideration, with or without amendment, the
21 application shall be reconsidered.

22 (b) For taking appropriate action after the mailing
23 to him of an action other than allowance, an applicant shall
24 be allowed six months, or such other time as the Secretary

1 in exceptional circumstances shall set in the refusal, or such
2 time as he may allow as an extension. Without such exten-
3 sion, action may be taken up to three months late by paying
4 an additional fee to be prescribed by the Secretary.

5 **Sec. 63. Initial Appeal.**

6 When an application for plant variety protection has
7 been refused by the Plant Variety Protection Office, the ap-
8 plicant may appeal to the Secretary. The Secretary shall
9 seek the advice of the Plant Variety Protection Board on
10 all appeals, before deciding the appeal.

11 **Chapter 7.—APPEALS TO COURTS AND OTHER**
12 **REVIEW**

13 **Sec. 71. Appeals.**

14 From the decisions made under sections 44, 63, 91,
15 92, and 128 appeal may, within sixty days or such further
16 time as the Secretary allows, be taken under the Federal
17 Rules of Appellate Procedure. The Court of Customs and
18 Patent Appeals and United States Courts of Appeals shall
19 have jurisdiction, with venue in the case of the latter as stated
20 in 28 U.S.C. 2343.

21 **Sec. 72. Civil Action Against Secretary.**

22 An applicant dissatisfied with a decision under section 63
23 or 91 of this title, may, as an alternative to appeal, have

1 remedy by civil action against the Secretary in the United
2 States District Court for the District of Columbia. Such
3 action shall be commenced within sixty days after such deci-
4 sion or within such further time as the Secretary allows. The
5 court may, in the case of review of a decision by the Secre-
6 tary refusing plant variety protection, adjudge that such
7 applicant is entitled to receive a certificate of plant variety
8 protection for his variety as specified in his application as the
9 facts of the case may appear, on compliance with the require-
10 ments of this Act.

11 **Sec. 73. Appeal or Civil Action in Contested Cases.**

12 (a) A party to a proceeding under section 92 of this
13 title, dissatisfied with the decision, may take an appeal under
14 section 71 or may have remedy by civil action if commenced
15 within sixty days after such decision or within such further
16 time as the Secretary allows. A party contemplating appeal
17 as provided herein shall notify all adverse parties of his in-
18 tention and any such adverse party, not the Secretary, shall
19 have the right, by notice served within ten days of the notice
20 to him, to elect that any review shall be by civil action. In
21 such suits the record in the Plant Variety Protection Office
22 shall be admitted on motion of any party upon the terms
23 and conditions as to costs, expenses, and the further cross-
24 examination of witnesses, as the court imposes, without prej-

1 udice to the right of the parties to take further testimony.
2 The testimony and exhibits of the record in the Plant Variety
3 Protection Office when admitted shall have the same effect as
4 if originally taken and produced in the suit.

5 (b) Such suit may be instituted against the party in
6 interest as shown by the record of the Plant Variety Protec-
7 tion Office at the time of the decision complained of, but any
8 party in interest may become a party to the action. If there
9 be adverse parties residing in a plurality of districts not em-
10 braced within the same State, or an adverse party residing
11 in a foreign country, the United States District Court for the
12 District of Columbia, or any United States district court to
13 which it may transfer the case, shall have jurisdiction and
14 may issue summons against the adverse parties directed to
15 the marshal of any district in which any adverse party
16 resides. Summons against adverse parties residing in foreign
17 countries may be served by publication or otherwise as the
18 court directs. The Secretary shall not be made a party but
19 he shall have the right to intervene. Judgment of the court
20 in favor of the right of an applicant to plant variety pro-
21 tection shall authorize the Secretary to issue a certificate of
22 plant variety protection on the filing in the Plant Variety
23 Protection Office of a certified copy of the judgment and on
24 compliance with the requirements of this Act.

1 **Chapter 8.—CERTIFICATES OF PLANT VARIETY**
2 **PROTECTION**

3 **Sec. 81. Plant Variety Protection.**

4 (a) If it appears that a certificate of plant variety pro-
5 tection should be issued on an application, a written notice of
6 allowance shall be given or mailed to the owner. The notice
7 shall specify the sum, constituting the issue fee, which shall
8 be paid within one month thereafter.

9 (b) Upon timely payment of this sum, and provided
10 that deposit of seed has been made in accordance with sec-
11 tion 52 (3), the certificate of plant variety protection shall
12 issue.

13 (c) If any payment required by this section is not timely
14 made, but is submitted with an additional fee prescribed by
15 the Secretary within nine months after the due date or within
16 such further time as the Secretary may allow, it shall be
17 accepted.

18 **Sec. 82. How Issued.**

19 A certificate of plant variety protection shall be issued
20 in the name of the United States of America under the seal
21 of the Plant Variety Protection Office, and shall be signed
22 by the Secretary or have his signature placed thereon, and
23 shall be recorded in the Plant Variety Protection Office.

24 **Sec. 83. Contents and Term of Plant Variety Protection.**

25 (a) Every certificate of plant variety protection shall

1 certify that the breeder (or his successor in interest) his heirs
2 or assignees, has the right, during the term of the plant
3 variety protection, to exclude others from selling the variety,
4 or offering it for sale, or reproducing it, or importing it,
5 or exporting it, or using it in producing (as distinguished
6 from developing) a hybrid or different variety therefrom,
7 to the extent provided by this Act. If the owner so elects,
8 the certificate shall also specify that in the United States
9 seed of the variety shall be sold by variety name only as
10 a class of certified seed and, if specified, shall also conform
11 to the number of generations designated by the owner.
12 Any rights, or all rights except those elected under the
13 preceding sentence, may be waived; and the certificate
14 shall conform to such waiver. The Secretary may at his
15 discretion permit such election or waiver to be made after
16 certifying and amend the certificate accordingly, without
17 retroactive effect.

18 (b) The term of plant variety protection shall expire
19 seventeen years from the date of issue of the certificate in
20 the United States. If the certificate is not issued within three
21 years from the effective filing date, the Secretary may shorten
22 the term by the amount of delay in the prosecution of the
23 application attributed by the Secretary to the applicant.

24 (c) The term of plant variety protection shall also ex-

pire if the owner fails to comply with regulations, in force at the time of certificating, relating to replenishing seed in a public repository: *Provided, however,* That this expiration shall not occur unless notice is mailed to the last owner recorded as provided in section 101 (d) and he fails, within the time allowed thereafter, not less than three months, to comply with said regulations, paying an additional fee to be prescribed by the Secretary.

Sec. 84. Certificate of Correction of Plant Variety Protection Office Mistake.

Whenever a mistake in a certificate of plant variety protection, incurred through the fault of the Plant Variety Protection Office, is clearly disclosed by the records of the Office, the Secretary may issue a certificate of correction stating the fact and nature of such mistake, under seal, without charge, to be recorded in the records of plant variety protection. A copy thereof shall be attached to each copy of the published specifications or certificate of plant variety protection and such certificate of correction shall be considered as part of the original certificate of plant variety protection. Every such certificate of plant variety protection shall have the same effect as if the same had been originally issued in such corrected form. The Secretary may issue a

1 corrected certificate of plant variety protection without charge
2 in lieu of and with like effect as a certificate of correction.

3 **Sec. 85. Certificate of Correction of Applicant's Mistake.**

4 Whenever a mistake of a clerical or typographical na-
5 ture, or of minor character, or in the description of the
6 variety, which was not the fault of the Plant Variety Pro-
7 tection Office, appears in a certificate of plant variety pro-
8 tection and a showing has been made that such mistake oc-
9 curred in good faith, the Secretary may, upon payment of
10 the required fee, issue a certificate of correction in the manner
11 and with attachment of copies as in section 84, if the correc-
12 tion unquestionably could have been made before the certifi-
13 cate issued. Such certificate of plant variety protection shall
14 have the same effect and operation in law on the trial of ac-
15 tions for causes thereafter arising as if the same had been
16 originally issued in such corrected form.

17 **Sec. 86. Correction of Named Breeder.**

18 An error as to the naming of a breeder in the applica-
19 tion, without deceptive intent, shall not affect validity of
20 plant variety protection and may be corrected at any time by
21 the Secretary in accordance with regulations established by
22 him or upon order of a federal court before which the matter
23 is called in question. Upon such correction the Secretary shall

1 issue a certificate accordingly. Such correction shall not de-
2 prive any person of any rights he otherwise would have had.

3 **Chapter 9.—REEXAMINATION AFTER ISSUE, AND**
4 **CONTESTED PROCEEDINGS**

5 **Sec. 91. Reexamination After Issue.**

6 (a) Any person may, within five years after the issu-
7 ance of a certificate of plant variety protection, notify the
8 Secretary in writing of facts which may have a bearing on
9 the protectability of the variety, and the Secretary may cause
10 such plant variety protection to be reexamined in the light
11 thereof.

12 (b) Reexamination of plant variety protection under
13 this section and appeals shall be pursuant to the same pro-
14 cedures and with the same rights as for original examina-
15 tions. Abandonment of the procedure while subject to a rul-
16 ing against the retention of the certificate shall result in can-
17 cellation of the plant variety certificate thereon and notice
18 thereof shall be endorsed on copies of the specification of the
19 protected plant variety thereafter distributed by the Plant
20 Variety Protection Office.

21 (c) If a person acting under subsection (a) makes a
22 prima facie showing of facts needing proof, the Secretary

1 may direct that the reexamination include such interparty
2 proceedings as he shall establish.

3 **Sec. 92. Priority Contest.**

4 (a) If the Secretary determines that two applications
5 of different applicants may be based on the same variety,
6 he may:

7 (1) Initiate a priority contest on his own motion
8 whether or not one of the applications may have been
9 certificated; or

10 (2) Issue a certificate on the application having the
11 earliest effective filing date, with notice to all; or

12 (3) Issue a certificate naming alternative owners,
13 under a single variety name acceptable to both.

14 (b) On request of any person when a certificate has
15 been issued naming another as an owner or alternative
16 owner, both having applied for protection on the same va-
17 riety, the Secretary shall institute a priority contest, except
18 that any person shall have forfeited his right to assert pri-
19 ority for the purpose of obtaining plant variety protection
20 when an adverse certificate has issued if he fails to make
21 the request within one year of the mailing of notice specified
22 in part (2) above or if he fails to make the request within

1 the period for taking action after refusal of his applica-
2 tion on the basis of the adverse certificate.

3 **Sec. 93. Effect of Adverse Final Judgment or of Non**
4 **Action.**

5 (a) A final judgment under section 92 adverse to an
6 application from which no appeal or other review had been
7 or can be taken or had shall constitute cancellation of any
8 certifying on that application, and notice thereof shall be
9 endorsed on copies of the specifications of the protected plant
10 variety thereafter distributed by the Plant Variety Protection
11 Office.

12 (b) Any person who has not proceeded in accordance
13 with the provision of this chapter shall not be foreclosed or
14 in any way prejudiced with respect to the defense of an
15 infringement suit or affirmative relief under declaratory judg-
16 ment proceedings.

17 (c) No person subject to an adverse decision in a pro-
18 ceeding under this chapter shall be foreclosed with respect to
19 asserting comparable grounds in defense of an infringement
20 suit or as a basis for affirmative relief under declaratory judg-
21 ment proceedings.

22 **Sec. 94. Interfering Plant Variety Protection.**

23 The owner of a certificate of plant variety protection
24 may have relief against another owner of a certificate of
25 the same variety by civil action, and the court may adjudge

1 the question of validity of the respective certificates, or the
 2 ownership of the certificate. The provisions of section 73 (b)
 3 of this title shall apply to actions brought under this section.

4 **TITLE III—PLANT VARIETY PROTECTION AND**
 5 **RIGHTS**

Chapter	Section
10. Ownership and Assignment-----	101
11. Infringement of Plant Variety Protection-----	111
12. Remedies for Infringement of Plant Variety Protection, and Other Actions -----	121
13. Intent and Severability-----	131
14. Temporary Provision and Related Enactments; Exempted Plants; Miscellaneous -----	141

6 **Chapter 10.—OWNERSHIP AND ASSIGNMENT**

7 **Sec. 101. Ownership and Assignment.**

8 (a) Subject to the provisions of this title, plant variety
 9 protection shall have the attributes of personal property.

10 (b) Applications for certificates of plant variety protec-
 11 tion, or any interest in a variety, shall be assignable by an
 12 instrument in writing. The owner may in like manner license
 13 or grant and convey an exclusive right to use of the variety
 14 in the whole or any specified part of the United States.

15 (c) A certificate of acknowledgment under the hand
 16 and official seal of a person authorized to administer oaths
 17 within the United States, or in a foreign country, of a diplo-
 18 matic or consular officer of the United States or an officer
 19 authorized to administer oaths whose authority is proved by
 20 a certificate of a diplomatic or consular officer of the United
 21 States, shall be prima facie evidence of the execution of an

1 assignment, grant, license, or conveyance of plant variety
2 protection or application for plant variety protection.

3 (d) An assignment, grant, conveyance or license shall
4 be void as against any subsequent purchaser or mortgagee for
5 a valuable consideration, without notice, unless it, or an
6 acknowledgment thereof by the person giving such encum-
7 brance that there is such encumbrance, is filed for recording
8 in the Plant Variety Protection Office within one month from
9 its date or at least one month prior to the date of such subse-
10 quent purchase or mortgage.

11 **Sec. 102. Ownership During Testing.**

12 An owner who, with notice that release is for testing
13 only, releases possession of seed or other sexually reproducible
14 plant material for testing retains ownership with respect
15 thereto; and any diversion from authorized testing, or any
16 unauthorized retention, of such material by anyone who has
17 knowledge that it is under such notice, or who is chargeable
18 with notice, is prohibited, and violates the property rights
19 of the owner. Anyone receiving the material tagged or
20 labeled with the notice is chargeable with the notice. The
21 owner is entitled to remedy and redress in a civil action here-
22 under. No remedy available by State or local law is hereby
23 excluded. No such notice shall be used, or if used be effective,
24 when the owner has made identical sexually reproducible
25 plant material available to the public, as by sale thereof.

1 Chapter 11.—INFRINGEMENT OF PLANT VARIETY
2 PROTECTION

3 Sec. 111. Infringement of Plant Variety Protection.

4 Except as otherwise provided in this title, it shall be an
5 infringement of the rights of the owner of a novel variety to
6 perform without authority, any of the following acts in the
7 United States, or in commerce which can be regulated by
8 Congress or affecting such commerce, prior to expiration of
9 the right to plant variety protection but after either the issue
10 of the certificate or the distribution of a novel plant variety
11 with the notice under section 127:

12 (1) sell the novel variety, or offer it or expose it for
13 sale, deliver it, ship it, consign it, exchange it, or solicit
14 an offer to buy it, or any other transfer of title or pos-
15 session of it;

16 (2) import the novel variety into, or export it from,
17 the United States;

18 (3) sexually multiply the novel variety as a step in
19 marketing (for growing purposes) the variety; or

20 (4) use the novel variety in producing (as distin-
21 guished from developing) a hybrid or different variety
22 therefrom; or

23 (5) use seed which had been marked "propagation
24 prohibited" or progeny thereof to propagate the novel
25 variety; or

1 (6) dispense the novel variety to another, in a
2 form which can be propagated, without notice as to
3 being a protected variety under which it was received;
4 or

5 (7) perform any of the foregoing acts even in
6 instances in which the novel variety is multiplied other
7 than sexually, except in pursuance of a valid United
8 States plant patent; or

9 (8) instigate or actively induce performance of any
10 of the foregoing acts.

11 **Sec. 112. Grandfather Clause.**

12 Nothing in this Act shall abridge the right of any per-
13 son, or his successor in interest, to reproduce or sell a variety
14 developed and produced by such person more than one year
15 prior to the effective filing date of an adverse application for
16 a certificate of plant variety protection.

17 **Sec. 113. Right To Save Seed; Crop Exemption.**

18 Except to the extent that such action may constitute an
19 infringement under subsections (3) and (4) of section 111,
20 it shall not infringe any right hereunder for a person to save
21 seed produced by him from seed obtained, or descended from
22 seed obtained, by authority of the owner of the variety for
23 seeding purposes and use such saved seed in the production of
24 a crop for use on his farm, or for sale as provided in this
25 section: *Provided*, That without regard to the provisions of

1 section 111 (3) it shall not infringe any right hereunder for
2 a person, whose primary farming occupation is the growing
3 of crops for sale for other than reproductive purposes, to sell
4 such saved seed to other persons so engaged, for reproductive
5 purposes, provided such sale is in compliance with such State
6 laws governing the sale of seed as may be applicable. A bona
7 fide sale for other than reproductive purposes, made in chan-
8 nels usual for such other purposes, of seed produced on a
9 farm either from seed obtained by authority of the owner for
10 seeding purposes or from seed produced by descent on such
11 farm from seed obtained by authority of the owner for seed-
12 ing purposes shall not constitute an infringement. A pur-
13 chaser who diverts seed from such channels to seeding pur-
14 poses shall be deemed to have notice under section 127 that
15 his actions constitute an infringement.

16 **Sec. 114. Research Exemption.**

17 The use and reproduction of a protected variety for plant
18 breeding or other bona fide research shall not constitute an
19 infringement of the protection provided under this Act.

20 **Sec. 115. Intermediary Exemption.**

21 Transportation or delivery by a carrier in the ordinary
22 course of its business as a carrier, or advertising by a person
23 in the advertising business in the ordinary course of that busi-
24 ness, shall not constitute an infringement of the protection
25 provided under this Act.

1 Chapter 12.—REMEDIES FOR INFRINGEMENT OF
2 PLANT VARIETY PROTECTION, AND OTHER
3 ACTIONS

4 Sec. 121. Remedy for Infringement of Plant Variety Pro-
5 tection.

6 An owner shall have remedy by civil action for in-
7 fringement of his plant variety protection under section 111.
8 If a variety is sold under the name of a variety shown in
9 a certificate, there is a prima facie presumption that it is
10 the same variety.

11 Sec. 122. Presumption of Validity; Defenses.

12 (a) Certificates of plant variety protection shall be pre-
13 sumed valid. The burden of establishing invalidity of a plant
14 variety protection shall rest on the party asserting invalidity.

15 (b) The following shall be defenses in any action charg-
16 ing infringement and shall be pleaded: (1) noninfringement,
17 absence of liability for infringement, or unenforceability; (2)
18 invalidity of the plant variety protection in suit on any
19 ground specified in section 42 of this title as a condition for
20 protectability; (3) invalidity of the plant variety protection
21 in suit for failure to comply with any requirement of section
22 52; (4) that the asserted infringement was performed un-
23 der an existing certificate adverse to that asserted and prior

1 to notice of the infringement; and (5) any other fact or
2 act made a defense by this Act.

3 **Sec. 123. Injunction.**

4 The several courts having jurisdiction of cases under this
5 title may grant injunctions in accordance with the principles
6 of equity to prevent the violation of any right hereunder on
7 such terms as the court deems reasonable.

8 **Sec. 124. Damages.**

9 (a) Upon finding an infringement the court shall award
10 damages adequate to compensate for the infringement but in
11 no event less than a reasonable royalty for the use made
12 of the variety by the infringer, together with interest and
13 costs as fixed by the court.

14 (b) When the damages are not determined by the jury,
15 the court shall determine them. In either event the court may
16 increase the damages up to three times the amount deter-
17 mined.

18 (c) The court may receive expert testimony as an aid
19 to the determination of damages or of what royalty would be
20 reasonable under the circumstances.

21 (d) As to infringement prior to, or resulting from a
22 planting prior to, issuance of a certificate for the infringed
23 variety, a court finding the infringer to have established

1 innocent intentions, shall have discretion as to awarding
2 damages.

3 **Sec. 125. Attorney Fees.**

4 The court in exceptional cases may award reasonable
5 attorney fees to the prevailing party.

6 **Sec. 126. Time Limitation on Damages.**

7 (a) No recovery shall be had for that part of any
8 infringement committed more than six years (or known to
9 the owner more than one year) prior to the filing of the
10 complaint or counterclaim for infringement in the action.

11 (b) In the case of claims against the United States
12 Government for unauthorized use of a protected variety, the
13 period between the date of receipt of written claim for com-
14 pensation by the department or agency of the Government
15 having authority to settle such claim, and the date of mail-
16 ing by the Government of a notice to the claimant that his
17 claim has been denied shall not be counted as part of the
18 period referred to in the preceding paragraph.

19 **Sec. 127. Limitation of Damages; Marking and Notice.**

20 Owners may give notice to the public by physically
21 associating with or affixing to the container of seed of a novel
22 variety or by fixing to the novel variety, a label containing
23 the words "Propagation Prohibited" and after the certificate
24 issues, such additional words as "U.S. Protected Variety".
25 In the event the novel variety is distributed by authorization

1 of the owner and is received by the infringer without such
2 marking, no damages shall be recovered against such in-
3 fringer by the owner in any action for infringement, unless
4 the infringer has actual notice or knowledge that propaga-
5 tion is prohibited or that the variety is a protected variety, in
6 which event damages may be recovered only for infringe-
7 ment occurring after such notice. As to both damages and in-
8 junction, a court shall have discretion to be lenient as to
9 disposal of materials acquired in good faith by acts prior to
10 such notice.

11 **Sec. 128. False Marking; Cease and Desist Orders.**

12 (a) Each of the following acts, if performed in connec-
13 tion with the sale, offering for sale, or advertising of sexually
14 reproducible plant material, is prohibited, and the Secretary
15 may, if he determines after an opportunity for hearing that
16 the act is being so performed, issue an order to cease and
17 desist, said order being binding unless appealed under
18 section 71:

19 (1) Use of the words "U.S. Protected Variety"
20 or any word or number importing that the material is
21 a variety protected under certificate, when it is not.

22 (2) Use of any wording importing that the mate-
23 rial is a variety for which an application for plant variety
24 protection is pending, when it is not.

25 (3) Use of the phrase "propagation prohibited" or

1 similar phrase without reasonable basis, a statement of
2 this basis being promptly filed with the Secretary if the
3 phrase is used beyond testing and no application has
4 been filed. Any reasonable basis expires one year after
5 the first sale of the variety except as justified thereafter
6 by a pending application or a certificate still in force.

7 (b) Anyone convicted of violating a binding cease and
8 desist order, or of performing any act prohibited in sub-
9 section (a) of this section for the purpose of deceiving the
10 public, shall be fined not more than \$10,000 and not less
11 than \$500.

12 (c) Anyone whose business is damaged or is likely to
13 be damaged by an act prohibited in subsection (a) of this
14 section, or is subjected to competition in connection with
15 which such act is performed, may have remedy by civil
16 action.

17 **Sec. 129. Nonresident Proprietors; Service and Notice.**

18 Every owner not residing in the United States may file
19 in the Plant Variety Protection Office a written designation
20 stating the name and address of a person residing within
21 the United States on whom may be served process or
22 notice of proceedings affecting the plant variety protection
23 or rights thereunder. If the person designated cannot be
24 found at the address given in the last designation, or if no
25 person has been designated, the United States District Court

1 for the District of Columbia shall have jurisdiction and sum-
2 mons shall be served by publication or otherwise as the court
3 directs. The court shall have the same jurisdiction to take
4 any action respecting the plant variety protection, or rights
5 thereunder that it would have if the owner were personally
6 within the jurisdiction of the court.

7 Chapter 13.—INTENT AND SEVERABILITY

8 Sec. 131. Intent.

9 It is the intent of Congress to provide the indicated
10 protection for new varieties by exercise of any constitutional
11 power needed for that end, so as to afford adequate encour-
12 agement for research, and for marketing when appropriate,
13 to yield for the public the benefits of new varieties. Consti-
14 tutional clauses 3 and 8 of article I, section 8 are both relied
15 upon.

16 Sec. 132. Severability.

17 If this Act is held unconstitutional as to some provisions
18 or circumstances, it shall remain in force as to the remaining
19 provisions and other circumstances.

20 Chapter 14.—TEMPORARY PROVISION AND RE- 21 LATED ENACTMENTS; EXEMPTED PLANTS; 22 MISCELLANEOUS

23 Sec. 141. Effective Date.

24 This Act shall take effect upon enactment. Applications
25 may be filed with the Secretary and held by him until the

1 Office of Plant Variety Protection is organized and in oper-
2 ation.

3 **Sec. 142. Amendment of Federal Seed Act.**

4 The Federal Seed Act (53 Stat. 1275) is amended as
5 follows:

6 (a) By adding at the end thereof:

7 **“TITLE V—SALE OF UNCERTIFIED SEED OF**
8 **PROTECTED VARIETY**

9 **“Section 501.**

10 “(a) It shall be unlawful in the United States or in in-
11 terstate or foreign commerce to sell by variety name seed not
12 certified by an official seed certifying agency when it is a
13 variety for which a certificate of plant variety protection
14 under the Plant Variety Protection Act specifies sale only
15 as a class of certified seed: *Provided*, That seed from a certi-
16 fied lot may be labeled as to variety name when used in a mix-
17 ture by, or with the approval of, the owner of the variety.”

18 (b) By adding at the end of section 102 the following
19 wording: “Seed of a variety for which a certificate of plant
20 variety protection under the Plant Variety Protection Act
21 specifies sale only as a class of certified seed shall be certified
22 only when

23 “(1) the basic seed from which the variety was pro-
24 duced was furnished by authority of the owner of the

1 variety if the certification is made during the term of
2 protection, and

3 “(2) it conforms to the number of generations
4 designated by the certificate, if the certificate contains
5 such a designation.”.

6 **Sec. 143. Amendment of Judicial Code.**

7 Title 28 of the United States Code, entitled Judicial
8 Code and Judiciary, is amended as follows:

9 (a) After section 1544 add:

10 **“Sec. 1545. Decision of the Plant Variety Protection Office.**

11 “The Court of Customs and Patent Appeals shall have
12 nonexclusive jurisdiction of appeals under section 71 of
13 the Plant Variety Protection Act.”

14 (b) In section 1338 after “Patents” in the heading,
15 after “patents” and after “patent” (both occurrences) insert
16 “, plant variety protection”.

17 (c) After section 2351 add:

2353. The Court of appeals has nonexclusive jurisdiction to hear appeals
under section 71 of the Plant Variety Protection Act.

18 **Sec. 144. Exempted Plants.**

19 The provisions of this Act shall not apply to the seeds,
20 plants, or transplants of okra, celery, peppers, tomatoes,
21 carrots, and cucumbers.

1 **Sec. 145. Short Title.**

2 This Act may be cited as the “Plant Variety Protection
3 Act”.

Passed the Senate October 2, 1970.

Attest:

FRANCIS R. VALEO,

Secretary.

AN ACT

To encourage the development of novel varieties of sexually reproduced plants and to make them available to the public, providing protection available to those who breed, develop, or discover them, and thereby promoting progress in agriculture in the public interest.

OCTOBER 5, 1970

Referred to the Committee on Agriculture

DIGEST of Congressional Proceedings

OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

For actions of October 13, 1970
91st-2nd; No. 180

OFFICE OF BUDGET AND FINANCE
(FOR INFORMATION ONLY;
NOT TO BE QUOTED OR CITED)

CONTENTS

Agriculture Committee	Food stamps.....4	Reclamation.....14
Action.....3	Minam River Canyon.....8	River Basin Compact.....9
Consumer.....11	NAL.....3	Solid waste disposal....5
Contracts.....12	National Urban Park....13	Susquehanna River Basin
Eagle Cap Wilderness	Outlays.....6	Compact.....9
Area.....8	Plant.....3	Wilderness..... 8
Farm bill.....1,10	Recess.....7	

HIGHLIGHTS: House accepted conference report on farm bill and agreed to Senate amendments to bill revising Federal Aid in Wildlife and Fish Restoration Acts. House committee reported plant variety protection bill and voted to report bill authorizing receipt of gifts for NAL. Rep. Goodling criticized distribution of food stamps to strikers. Senators Dole, Miller and others urged action on Farm Bill Conference report before **recessing** and deplored attempts to keep the report from reaching the floor.

HOUSE

1. FARM BILL. Accepted the conference report on H.R. 18546, the proposed Agricultural Act of 1970. pp. H10057-62
2. FISH AND WILDLIFE. Agreed to the Senate amendments to H.R. 12475, to revise and clarify the Federal Aid in Wildlife Restoration Act and the Federal Aid in Fish Restoration Act. This bill now goes to the President. p. H10039

3. AGRICULTURE COMMITTEE ACTION.

Reported without amendment S. 3070, the plant variety protection bill. (H. Rept. 91-1605). p. H10092; and

Voted to report (but did not actually report) H.R. 19402, authorizing the receipt of gifts for the benefit of the National Agricultural Library. p. D1145

4. FOOD STAMPS. Rep. Goodling stated the food stamp program "has become distorted" through issuance of stamps to strikers and urged the program be returned to "its proper 'assistance to the needy' form". p. H10083

5. SOLID WASTE DISPOSAL. Agreed to conference report on H.R. 11833, to amend the Solid Waste Disposal Act. This bill now goes to the President. pp. H10066-7

6. OUTLAYS. Received a letter from the Director, Office of Management and Budget, transmitting a report on the operation of the limitation on budget outlays for FY 71, for the period through September 30, 1970, pursuant to section 501 of the Second Supplemental Appropriations Act, 1970 (H.Doc. 91-403); to the Committee on Appropriations. p. H10092

SENATE

7. RECESS. Agreed to H. Con. Res. 774 providing for recess of the Congress from Wednesday, October 14 until Monday, Nov. 16. p. S17950

8. WILDERNESS. Passed with amendment S. 1142, to classify as wilderness national forest land adjacent to the Eagle Cap Wilderness Area known as Minam River Canyon. pp. S17811-12

9. RIVER BASIN COMPACT. Judiciary Committee reported with amendments S. 1079, granting congressional consent to the Susquehanna River Basin Compact (S. Rept. 91-1333). p. S17816

10. FARM BILL. Senators Dole, Miller and others spoke of the need to act on the Farm Bill before the recess and deplored attempts to prevent the Conference Report from coming before the Senate. pp. S17968-74; S17978-83

11. CONSUMER. Sen. Hart placed in the Record the Marketing Conference speech delivered by FTC Commissioner Elman, "The Consumer Movement--And What It Means for Business" pp. S17836-37

BILLS INTRODUCED

12. CONTRACTS. H.R. 19696, by Rep. Foley et al, to authorize the Secretary of Agriculture to enter into negotiated contracts for the protection from fires of lands under the jurisdiction of the Department of Agriculture; to the Committee on Agriculture.

PLANT VARIETY PROTECTION ACT

OCTOBER 13, 1970.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. POAGE, from the Committee on Agriculture, submitted the following

REPORT

[To accompany S. 3070]

The Committee on Agriculture, to whom was referred the bill (S. 3070) to encourage the development of novel varieties of sexually reproduced plants and to make them available to the public, providing protection available to those who breed, develop, or discover them, and thereby promoting progress in agriculture in the public interest, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE

This bill provides for the issuance of "certificates of plant variety protection" assuring the developers of novel varieties of sexually reproduced plants of exclusive rights to sell, reproduce, import, or export such varieties, or use them in the production (as distinguished from the development) of hybrids or different varieties, for a period of 17 years. A Plant Variety Protection Office would be established in the Department of Agriculture to administer the law. Similar protection is now provided for asexually reproduced varieties through patents issued by the Patent Office.

Under patent law, protection is presently limited to those varieties of plants which reproduce asexually, that is, by such methods as grafting or budding. No protection is available to those varieties of plants which reproduce sexually, that is, generally by seeds. Thus, patent protection is not available with respect to new varieties of most of the economically important agricultural crops, such as cotton or soybeans.

NEED FOR THE LEGISLATION

The benefits derived through provision of legal protection for plant varieties have been amply demonstrated in Western Europe where

such protection has led to a great flowering of plant breeding, with the concomitant benefits of a more productive national agriculture and improved agricultural export. In the United States, where legal protection for plant varieties is not now available, the committee believes all of the following benefits may be expected from providing such protection:

1. It will greatly stimulate private plant breeding.
2. It will allow our Government agricultural experiment stations to increase their efforts on needed basic research.
3. It would permit public expenditures for applied plant breeding to be deviated to important areas which industry may not pursue.
4. It will give farmers and gardeners more choice, and varieties which are better in yield or in quality, and so forth.
5. It will make American agricultural products more competitive in world markets.
6. Consumers and other purchasers of crops will benefit: in some instances by improved quality, in others by aiding the production needed to serve them.

An explanatory word or two on these foreseen benefits may be in order.

The new law will definitely stimulate plant breeding. Experience in England provides a good case history. Prior to the enactment of its Plant Varieties and Seeds Act 1964, little plant breeding was done in England by private companies, and not much was done by government agencies. Since the new law came into effect, there has been a great upsurge of plant breeding, and a once moribund seed industry is now showing signs of great new vitality.

Prior to the Plant Patent Act of 1930, there was very little private plant breeding done aside from that performed by a handful of amateurs or hobbyists. Since then, some 2,700 plant patents have been issued, largely to commercial breeders. It is difficult to estimate the total value of the fruits, nuts, cut flowers, and ornamentals deriving from patented varieties, but some insight into the value of this commerce may be obtained by considering the case of roses. It is estimated that 50 million rose plants, over 80 percent of which are from patent varieties, are sold to home gardeners in the United States each year. These plants have an estimated wholesale value of \$35 million. Additionally, there are some 20 million rose plants grown in U.S. greenhouses. More than 90 percent of these are of patented varieties and the flowers produced from them are estimated to have a commercial value in excess of \$50 million.

The availability of legal protection for plant varieties will allow our Government experiment stations to concentrate more of their efforts on greatly needed basic research. Plant breeding is becoming an ever more sophisticated science. If the United States is to continue to keep pace with developments elsewhere, our scientific institutions must constantly search out the new genetic techniques and properties which can be incorporated into the overall American plant breeding effort. Private seedsmen cannot afford to do this kind of research. The public institutions are well equipped for such investigations.

The availability of protection for plant breeders should increase the benefits from public expenditures where they continue to be used for applied plant breeding. Many public institutions today spend

sizable sums of money on the development of finished plant varieties. Once released, these experiment station varieties are made available to all. Advertising and marketing such varieties is often not attractive. Within a short time, many of those which are marketed disappear from the market because those who handle them learn they cannot make the kind of return on their investment needed to allow them to continually handle such varieties.

Legal protection for plant varieties will give American farmers the choice of more and better varieties. Many experiment station varieties are short lived on the market. This knowledge has tended to discourage public institutions from applied plant breeding. The result is that farmers today are not being offered enough choices and not enough work is being done on some of our most important crops. Soybeans provide a good example of a crop that could and would be more productive as a result of the more and better varieties which would be made available as a result of legal protection for plant varieties. Other major U.S. crops, like cotton, wheat, barley, oats, and rice, for example, now largely ignored by the private researchers, would almost certainly benefit greatly from the impact of a competitive, private plant breeding effort.

Legal protection for plant varieties should make U.S. agricultural products more competitive in world markets. Higher crop yields help reduce per unit costs of the finished product, be it meat, milk, food, or fiber. Clear examples of this may be seen by noting the dramatic increase in yields of just two crops—corn and sorghum—which, as a result of their adaptation to hybridization, have been the object of keen competition among private plant breeders of this country.

PUBLIC HEARINGS—COMMITTEE ACTION

Public hearings were held on June 10, 1970, by the Subcommittee on Departmental Operations on H.R. 13424 by Mr. Gubser; H.R. 13631 by Messrs. Purcell, Horton, Leggett, Hungate, Teague of Texas, Dorn, Abernethy, Fisher, Talcott, Biester, Hansen of Idaho, Winn, Scherle, Daddario, Mahon, Mrs. Reid of Illinois, Zablocki, Smith of Iowa, Michel, Montgomery, Brown of Ohio, Gonzalez, Teague of California, and Mrs. May; H.R. 13658 by Messrs. Purcell, Reuss, Wyatt, MacGregor, and Quie; H.R. 13901 by Mr. Arends; H.R. 14332 by Mr. Frey; and H.R. 15226 by Mr. McCloskey; all of which are substantively similar to the measure under consideration, S. 3070. The full committee on October 13, 1970, by a vote of 16-2 ordered the Senate-passed bill reported.

COMMITTEE INTENT

During the consideration of S. 3070 the committee discussed several suggestions for establishing a method of providing useful information about the milling and baking characteristics of wheat.

It was brought to the committee's attention that wheat producers in the past have had some very expensive and unfortunate experiences with poor quality wheat about which they did not have necessary information as to end use characteristics before they committed themselves to producing it.

The committee considered various amendments which were designed to meet this problem, but did not adopt them only because it felt the Secretary could (and should) meet this problem administratively under the provisions of the legislation.

Section 41(a)(1) specifically refers to milling and baking characteristics of wheat or an example of "distinctiveness" in arriving at the definition of the term "novel variety".

Therefore, it is the committee's intent that the Secretary shall to the maximum extent practicable, provide information concerning the milling and baking characteristics of wheat. It is also the committee's intent that such information be made available to the public and that it include as many processing and product characteristics as is feasible.

SECTION-BY-SECTION EXPLANATION

TITLE I—PLANT VARIETY PROTECTION OFFICE

CHAPTER 1.—ORGANIZATION AND PUBLICATIONS

Section 1. Establishment.—This section establishes a Plant Variety Protection Office in the Department of Agriculture.

Section 2. Seal.—This section provides that the Plant Variety Protection Office shall have a seal with which documents and certificates evidencing plant variety protection shall be authenticated.

Section 3. Organization.—This section authorizes the Secretary of Agriculture to determine the organization of the Plant Variety Protection Office.

Section 4. Restrictions on Employees as to Interest in Plant Variety Protection.—This section makes employees of the Plant Variety Protection Office ineligible to apply for plant variety protection or to acquire (except by inheritance or bequest) any interest in any matters before that office. This section does not apply to members of the Plant Variety Protection Board who are not otherwise employees of the office.

Section 5. Bond of employees.—This section requires surety bonds from such employees as may be designated by the Secretary to secure the faithful discharge of their duties.

Section 6. Regulations.—This section authorizes the Secretary to establish regulations for the conduct of proceedings in the office.

Section 7. Plant Variety Protection Board.—This section provides for a Plant Variety Protection Board to advise the Secretary concerning regulations and on all appeals from the examiner, and to advise the Secretary on declaring a protected variety open to public use for reasonable royalties under section 44. The board would consist of such number of members as the Secretary might appoint. They would be persons expert in various areas of varietal development covered by the act and would be drawn approximately equally from the private or seed industry sector and from the sector of Government or the public. The Secretary or his designee would act as chairman without vote except in the case of ties.

Section 8. Library.—This section provides for the maintenance of a library to aid the officers in the discharge of their duties.

Section 9. Register of Protected Plant Varieties.—This section requires the Secretary to maintain a register of published specifications of United States protected plant varieties.

Section 10. Publications.—This section authorizes the Secretary to publish plant variety protection specifications; the Official Journal of

the Plant Variety Protection Office; and laws, rules of practice, or other publications relating to the business of the office. It also authorizes him to establish public facilities for record searches, disseminate information, and exchange publications, specifications and certain other materials for similar materials.

Section 11. Copies for Public Libraries.—This section authorizes the Secretary to supply copies of specifications, drawings, and photographs of protected varieties to public libraries in the United States.

CHAPTER 2.—LEGAL PROVISIONS AS TO THE PLANT VARIETY PROTECTION OFFICE

Section 21. Day for Taking Action Falling on Saturday, Sunday, or Holiday.—This section provides that when the office is closed on a day that any action is to be taken, the action may be taken on the next succeeding business day.

Section 22. Form of Papers Filed.—This section authorizes the Secretary to prescribe the form of papers to be filed in the office.

Section 23. Testimony in Plant Variety Protection Office Cases.—This section provides for the taking of affidavits and depositions by any officer authorized to take depositions for use in the courts or by any hearing officer acting by authority of the Secretary.

Section 24. Subpenas, Witnesses.—This section provides for issuance of subpenas, witness fees, and enforcement through judicial contempt procedures. Subpenas would be issued upon the application of any party by the clerk of any U.S. court for the district wherein the testimony is to be taken for any witness residing or being within such district or within 100 miles of the hearing site. Every witness subpoenaed or testifying would be allowed fees and traveling expenses as in U.S. district courts.

Section 25. Effect of Defective Execution.—Defectively executed documents may be provisionally accepted by the Secretary provided a properly executed document is submitted within such time as may be prescribed.

Section 26. Regulations for Practice Before the Office.—This section authorizes the Secretary to regulate practice before the office.

Section 27. Unauthorized Practice.—This section provides for actions for return of money paid them, civil damages, and injunctions against persons guilty of unauthorized practice before the office. The principal effect of the section insofar as a remedy for damage is concerned is to place the burden of proof on the unauthorized practitioner to show that the work was done competently and without negligence.

This section exempts any authorized practitioner from liability for damages if he establishes that the work was done competently and without negligence. The section is not applicable to a person who, without a claim of self-sufficiency, works under the supervision of another who is admitted to practice and the responsible party, nor to anyone who establishes that he acted only on behalf of any employer by whom he was regularly employed.

CHAPTER 3.—PLANT VARIETY PROTECTION FEES

Section 31. Plant Variety Protection Fees, Appropriations.—This section would provide for the collection of reasonable fees established by the Secretary to cover substantially all costs of administration;

provide for their deposit in a revolving fund which would be available for administration of the act; and provide for a \$50 filing fee pending establishment of fees by the Secretary.

Section 32. Payment of Plant Variety Protection Fees; Return of Excess Amounts.—This section provides for payment of fees to the Secretary and refund of any sum paid by mistake.

TITLE II—PROTECTABILITY OF PLANT VARIETIES AND CERTIFICATES OF PROTECTION

CHAPTER 4.—PROTECTABILITY OF PLANT VARIETIES

Section 41. Definitions and Rules of Construction.—Subsection (a) defines “novel variety” as one differing in any characteristic from all prior varieties, possessing uniformity to the extent that any variations are predictable and commercially acceptable, and having reasonable stability.

Subsection (b) defines “United States” to include territories, possessions, and the Commonwealth of Puerto Rico.

Subsection (c) defines “kind” as one or more related species or subspecies known by a common name, such as soybeans, flax, carrot, or radish.

Subsection (d) defines “date of determination” as the date of at least tentative determination that the variety has been sexually reproduced with recognized characteristics making it a novel variety, whether or not the novelty thereof has been determined. This is intended to require that the variety has been determined to possess the characteristics which make it novel, even though the novelty of such characteristics is not established until a later date.

Subsection (e) defines “breeder” to make it clear that the person directing the final breeding creating the novel variety, or discovering the novel variety, or the principal of such person if he is acting for a principal, is to be considered the breeder.

Subsection (f) defines “sexually produced” to include any production by seed.

Subsection (g) defines the term “basic seed” as the seed planted to produce certified or commercial seed.

Subsection (h) defines the term “testing” to provide for a period prior to the first sale of the variety during which it can be tested without becoming a public variety.

Subsection (i) defines “public variety.” Public varieties are not subject to protection under the bill. Since they are public property no exclusive rights can be obtained.

Subsection (j) provides that a variety shall be “effectively available to workers in this country” within the meaning of section 42(1)(B) if a source from which the variety can be purchased is indicated in the publication described in section 42(1)(B) or readily determinable or if the publication teaches how to produce the variety from source material available to workers in this country. Varieties covered by section 42(1)(B) are in the public domain, so exclusive rights in them cannot be obtained under the bill.

Section 42. Right to Plant Variety Protection; Plant Varieties Protectable.—Under this section the breeder of any novel variety of sexually reproduced plants (except fungi, bacteria, and hybrids)

or his successor in title is entitled to plant variety protection therefor unless—

(1) before the date of determination by the breeder, or more than one year before the effective filing date of the application for protection the variety was (A) a public variety in this country or (B) effectively available to workers in this country and adequately described by a publication reasonably deemed a part of the public technical knowledge in this country, which description must include a disclosure of the principal characteristics by which the variety is distinguished; or

(2) an application for protection based on the same breeder's acts was filed in a foreign country by the proprietor or his privies more than one year before the effective filing date actually in the United States; or

(3) another is entitled to an earlier date of determination and such other has continued a program of development and testing toward commercialization, or within six months of such earlier date publishes in the manner just described in (1)(B).

The Secretary could, by regulation, permit late filing (more than 1 year after a sale of the variety) in appropriate cases. An example of such a case might be where filing was delayed by a postal strike, as recently occurred in the case of patent applications.

Section 43. Reciprocity Limits.—Protection may be limited by regulation to U.S. nationals, except that

(1) this limitation does not apply where it would violate a treaty, and

(2) nationals of a foreign state in which they are domiciled will be entitled to so much of the protection here afforded as is afforded to U.S. nationals for the same genus and species.

Section 44. Public Interest In Wide Usage.—When necessary to insure an adequate supply of fiber, food, or feed in this country, the Secretary may declare a protected variety open to use for a reasonable royalty to the owner for up to 2 years.

CHAPTER 5.—APPLICATIONS: FORM, WHO MAY FILE, RELATING BACK, CONFIDENTIALITY

Section 51. Application for Recognition of Plant Variety Rights.—An application may be filed by the owner of the variety. An error in naming the breeder may be corrected at any time.

Section 52. Content of Application.—The application must contain the name and description of the variety, its genealogy and breeding procedure if known, a declaration that a viable sample of basic seed will be kept in a public repository, and a statement of the basis of the applicant's ownership.

Section 53. Joint Breeders.—One joint breeder may apply, naming the others. The certificate may be issued to such of the joint breeders as join in the application.

Section 54. Death or Incapacity of Breeder.—Legal representatives may apply in behalf of deceased or legally incapacitated breeders.

Section 55. Benefit of Earlier Filing Date.—An application is to be deemed filed on the earliest of the following dates:

(1) the date actually filed;

(2) the earliest date of filing in a foreign country which affords similar privileges in the case of applications filed in the United States by citizens of the United States, if the U.S. application was filed within 12 months thereafter;

(3) the earliest date of filing in the United States which has been continuously succeeded by applications filed before the issuance of a certificate or other termination of proceedings on a pending prior application.

Section 56. Confidential Status of Application.—This section requires applications to be kept confidential.

Section 57. Publication.—This section authorizes the Secretary to establish regulations for the publication of any pending application at the request of the owner.

CHAPTER 6.—EXAMINATION, RESPONSE TIME, INITIAL APPEALS

Section 61. Examination of Application.—This section provides for the examination of applications.

Section 62. Notice of Refusal; Reconsideration.—When an application is refused or an objection or requirement is made by the examiner, the Secretary is to notify the applicant. If, after receiving such notice, the applicant requests reconsideration, with or without amendment, the application shall be reconsidered. The applicant is allowed 6 months to take appropriate action after an adverse action, or such other time as the Secretary may set, plus upon payment of an additional fee an additional 3 months. The Secretary could set a shorter time than 6 months only in exceptional circumstances. The provision for a 3-month extension upon payment of an additional fee is designed to permit an applicant to avoid the time and trouble involved in obtaining an extension where he is willing to pay the fee.

Section 63. Initial Appeal.—When an application is refused by the examiner, an applicant may appeal to the Secretary who is required to seek the advice of the Plant Variety Protection Board.

CHAPTER 7.—APPEALS TO COURTS AND OTHER REVIEW

Section 71. Appeals.—From decisions made under sections 44, 63, 91, 92, and 128, appeal may be taken under the Federal Rules of Appellate Procedure. The Court of Customs and Patent Appeals and the U.S. Courts of Appeal shall have jurisdiction.

Section 72. Civil Action Against Secretary.—An applicant dissatisfied with a decision under section 63 or section 91 (which deals with reexamination after issue) may, as an alternative to appeal, have remedy by civil action against the Secretary in the U.S. District Court for the District of Columbia. In reviewing a Secretary's decision refusing plant variety protection, the court may adjudge the applicant entitled to such protection on compliance with the requirements of the act.

Section 73. Appeal or Civil Action in Contested Cases.—This section provides for a remedy by civil action as an alternative to appeal under section 71, for any party to a priority contest under section 92. A party contemplating an appeal is required to notify all adverse parties of his intention, and any adverse party except the Secretary may, by notice served within 10 days of the notice to him, elect that any review shall be by civil action.

CHAPTER 8.—CERTIFICATES OF PLANT VARIETY PROTECTION

Section 81. Plant Variety Protection. This section provides for issuance of a certificate of plant variety protection after a finding of entitlement and payment of fees.

Section 82. How Issued.—This section deals with the formalities of issuing and recording certificates.

Section 83. Contents and Terms of Plant Protection.—The certificate is to certify that the breeder has the right to exclude others from selling the variety, or offering it for sale, or reproducing it, or importing it, or exporting it, or using it in producing (as distinguished from developing) a hybrid or different variety therefrom to the extent provided by this act. At the election of the owner the certificate shall specify that seed of the variety shall be sold by variety name only as a class of certified seed and conform to the number of generations designated by the owner. The term of plant variety protection shall expire 17 years after the date of issue of the certificate, except that the Secretary may shorten the term by the amount of delay attributed to the applicant if the certificate is not issued within 3 years from the effective filing date. If the owner fails to comply with regulations relating to replenishing seed in a public repository, the certificate shall expire after notice and further failure to comply with the regulations within the time allowed thereafter (at least 3 months).

Section 84. Certificate of Correction of Plant Variety Protection Office Mistake.—This section provides for corrections of mistakes in certificates of plant variety protection clearly disclosed by the records of the Plant Variety Protection Office. This section gives more full relief than section 85. Under this section the correction of a Government mistake has effect from the date of issuance of the original certificate. Under section 85 correction of a mistake of the applicant only takes effect upon correction.

Section 85. Certificate of Correction of Applicant's Mistake.—This section provides for correction of good faith mistakes which are not the fault of the Office of Plant Variety Protection.

Section 86. Correction of Named Breeder.—This section provides that an error as to the naming of a breeder in an application shall not affect validity of plant variety protection and may be corrected at any time without depriving any person of any rights he otherwise would have had.

CHAPTER 9.—REEXAMINATION AFTER ISSUE, AND CONTESTED PROCEEDINGS

Section 91. Reexamination After Issue.—This section authorizes the Secretary to cause plant variety protection to be reexamined upon written notice by any person within 5 years after issuance of a certificate of facts which may have a bearing on the protectability of the variety.

Section 92. Priority Contest.—Where two applications of different applicants may be based on the same variety, the Secretary may—

- (1) Initiate a priority contest, or
- (2) Issue a certificate on the application having the earliest effective filing date, or
- (3) Issue a certificate naming both proprietors as alternative owners.

Where one applicant is named owner or alternative owner, the Secretary shall institute a priority contest upon the timely request of another applicant for protection for the same variety.

Section 93. Effect of Adverse Final Judgment or of Nonaction.—A final judgment of a priority contest, if adverse to an application and not appealed, shall constitute cancellation of any certificating on that application.

Nonaction or an adverse decision on a reexamination or priority contest shall not prejudice defense of an infringement suit or affirmative relief for a declaratory judgment. Thus a person having knowledge which may invalidate a certificate is not forced to enter a fight which may not settle the question anyway. He may go to court on it, if facts justify a suit for declaratory judgment. Or he may wait until there is more need to take such action, or until he is sued for infringement.

Section 94. Interfering Plant Variety Protection.—This section provides for a civil action by the owner of a certificate of plant variety for protection against another owner of a certificate for the same variety, and the court may adjudge the validity of the respective certificates, or the ownership of the certificate. Determining ownership is especially applicable to a certificate issued jointly to rival claimants under section 92(a)(3).

TITLE III—PLANT VARIETY PROTECTION AND RIGHTS

CHAPTER 10.—OWNERSHIP AND ASSIGNMENT

Section 101. Ownership and Assignment.—This section provides that plant variety protection shall have the attributes of personal property; that applications, or any interest in a variety, shall be assignable in writing; and that assignments shall be void against a subsequent purchaser or mortgagee for a valuable consideration, without notice, unless recorded within 1 month from its date or at least 1 month prior to the date of such subsequent purchase or mortgage. This section also provides that specified forms of acknowledgment shall constitute prima facie evidence of an assignment.

Section 102. Ownership during testing.—This section provides a remedy against any person who, with notice of the owner's interest, diverts from authorized testing, or retains without authorization, seed or other sexually reproducible plant material which the owner has not made available to the public.

CHAPTER 11.—INFRINGEMENT OF PLANT VARIETY PROTECTION

Section 111. Infringement of plant variety protection.—This section sets out what shall amount to infringement of plant variety protection. Generally an infringement is the unauthorized exercise of a right given exclusively to the proprietor by a certificate of plant variety protection under section 83. However, this section is broader than section 83 in some respects and narrower in others. Since a remedy is provided for an infringement, the enforceable rights accorded by the bill are governed by this section. Infringement can occur before a certificate

of plant variety protection is issued when a novel plant variety has been distributed with notice that propagation is prohibited. This more resembles copyright law than patent law. Justification for this may be found partly in the fact that infringement is expected almost never to be by independent work, but by willful reproduction starting from the protected variety itself.

The following acts performed without authority of the owner of the variety constitute infringement:

(1) any transfer of title or possession, or offer to buy or sell, the novel variety;

(2) importation or exportation of the novel variety;

(3) sexual multiplication as a step in marketing the variety;

(4) use of the novel variety in producing (as distinguished from developing) a hybrid or different variety;

(5) use of seed marked "propagation prohibited" or progeny thereof to propagate the novel variety;

(6) dispensation of the novel variety to another without notice that it is a protected variety;

(7) performance of any of the foregoing in which the variety is multiplied asexually (except pursuant to a plant patent); or

(8) inducing any of the foregoing.

Producing (as distinguished from developing) a hybrid or different variety means that use of the protected variety in producing the commercial class of seed of a variety constitutes infringement. Use of the protected variety as one source of germ plasma to breed a novel variety is permissible. As an example, the use of a protected inbred line of corn to cross it with another inbred line to produce a hybrid for commercial use, or production of a composite variety which is repeatedly reconstituted for commercial sale by intercrossing a set of seed lines one of which is protected, shall constitute an infringement. The use of such inbred line for hybridization with other materials to develop through breeding a novel inbred line as provided in section 114, however, does not constitute infringement; nor does the production of such new inbred line for the general market constitute infringement.

Section 112. Grandfather Clause.—Section 112 would protect a person who developed and produced a variety more than 1 year prior to the effective filing date of an adverse application, and his successor in interest, in his right to reproduce and sell such variety.

Section 113. Right to Save Seed. Crop Exemption.—This section authorizes a farmer to sell the crop produced from a protected variety for other than reproductive purposes; to save seed from such crop for future use or planting on the farm; or, if his primary farming occupation is the growing of crops for sale for other than reproductive purposes, to sell such saved seed for reproductive purposes to other persons so engaged.

Section 114. Research Exemption.—Use and production for research is not to constitute infringement.

Section 115. Intermediary exemption.—This section exempts carriers and advertising companies acting in the ordinary course of their business from infringement actions.

CHAPTER 12.—REMEDIES FOR INFRINGEMENT OF PLANT VARIETY PROTECTION, AND OTHER ACTIONS

Section 121. Remedy for infringement of plant variety protection.—A remedy by civil action is provided for infringement. Sale under the name of the protected variety constitutes a prima facie presumption that the variety sold is the same as that protected.

Section 122. Presumption of validity; defenses.—This section provides that certificates of plant variety protection shall be presumed valid. The burden of establishing invalidity rests on the party asserting invalidity. Subsection (b) requires that defenses to infringement actions be pleaded.

Section 123. Injunction.—This section authorizes injunctions to prevent violations of rights protected by the bill.

Section 124. Damages.—Damages for infringement are to be the higher of adequate compensation or a reasonable royalty, together with interest and costs, and the court may increase them up to three times the amount determined.

The court is to have discretion as to awarding damages where it finds the infringer has established innocent intentions and the infringement occurred prior to issuance of a certificate.

Section 125. Attorneys Fees.—In exceptional cases the court may award reasonable attorneys fees to the prevailing party.

Section 126. Time Limitation on Damages.—Infringement actions must be brought within 6 years after the infringement (or within 3 years after the owner learns of the infringement). Nothing in this section would prevent application of the doctrine of laches, which might result in the earlier barring of an action. In infringement cases against the United States, the period between receipt by the appropriate agency of a written claim and the mailing of a notice of denial of such claim shall not be counted in determining the period of limitation.

Section 127. Limitation of Damages; Marking and Notice.—No damages can be collected for infringement where a variety is distributed by authority of the owner and is received by the infringer without being marked "Propagation Prohibited" or (after the certificate issues) "U.S. Protected Variety", unless the infringer has actual knowledge that propagation is prohibited or that the variety is a protected variety.

Section 128. False Marketing, Cease and Desist Orders.—This section prohibits falsely representing that plant material is a U.S. protected variety or that an application for plant protection is pending. Use of the phrase "propagation prohibited" or similar phrase without reasonable basis is also prohibited. No reasonable basis exists for use of the phrase after it has been used for a year after testing has been completed, unless an application is pending or a certificate is in force. This section is enforceable by cease and desist order and civil damages.

Section 129. Nonresident Proprietors; Service and Notice.—This section provides for service of process on nonresident owners.

CHAPTER 13.—INTENT AND SEVERABILITY

Section 131. Intent.—This section recites the constitutional basis for the bill, principally the commerce and patent powers.

Section 132. Severability.—This section provides that if the bill is held unconstitutional as to some provisions or circumstances it shall remain in force as to the remainder.

CHAPTER 14.—TEMPORARY PROVISION AND RELATED ENACTMENTS; MISCELLANEOUS

Section 141. Effective Date.—The bill would be effective upon enactment.

Section 142. Amendment of Federal Seed Act.—This section adds a new title V to the Federal Seed Act to prohibit sale by variety name of seed which is required by a certificate of plant variety protection to be sold only as certified seed and which is not so certified.

This section also amends section 102 of the Federal Seed Act to provide that, when required by a certificate of plant variety protection, seed of the protected variety shall be certified only when the basic seed from which a variety was produced was furnished by authority of the owner of the variety, and shall conform to the number of generations designated by the certificate.

Section 143. Amendment of Judicial Code.—This section gives the Court of Customs and Patent Appeals and the courts of appeals jurisdiction of appeals under section 71 of the bill.

Section 144. Short Title.—This section provides a short title for the bill "Plant Variety Protection Act."

DEPARTMENTAL VIEWS

Department of Agriculture supports the objectives of the bill, but reserves comment on its specific provisions pending completion of an administration study of the laws protecting proprietary rights in the United States. Its report is as follows:

DEPARTMENT OF AGRICULTURE,
Washington, D.C., June 10, 1970.

HON. ALLEN J. ELLENDER,
Chairman, Committee on Agriculture and Forestry,
U.S. Senate.

DEAR MR. CHAIRMAN: This is in reply to your request of October 24, 1969, for a report on S. 3070, a bill "To encourage the development of novel varieties of sexually reproduced plants and making them available to the public, by making protection available to those who breed, develop, or discover them, thereby promoting progress in the useful art of agriculture."

This Department supports the objective of S. 3070.

We believe that it is desirable to provide incentive for private enterprise to undertake the research and development required to produce novel varieties of sexually produced plants. The proposed legislation would provide such incentive.

The Department is not prepared at this time to comment on the specific provisions of S. 3070. The administration has under consideration a number of important changes to the laws protecting proprietary rights in the United States. This review will have implications for programs such as the one proposed here. We wish to reserve further

comment on the provisions of S. 3070 until we have had an opportunity to evaluate them in the light of the findings of this administration review.

The Bureau of the Budget advises that there is no objection to the presentation of this report from the standpoint of the administration's program.

Sincerely,

J. PHIL CAMPBELL,
Under Secretary.

COST

Although the Department has not submitted a formal estimate on the cost of establishing and maintaining the Plant Variety Protection Office it has indicated that the cost would be inversely proportional to the number of certificate applications processed. The Department estimates that approximately 200 applications per annum will be processed; annual operational costs of \$275,000 would be realized at that level of activity. If, however, 500 applications were to be processed the annual costs would be but \$485,000.

CHANGES IN EXISTING LAW

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

Federal Seed Act

* * * * *

SEC. 102. Any labeling, advertisement, or other representation subject to this Act which represents that any seed is certified seed or any class thereof shall be deemed to be false in this respect unless (a) it has been determined by a seed certifying agency that such seed conformed to standards of genetic purity and identity as to kind or variety, and is in compliance with the rules and regulations of such agency pertaining to such seed; and (b) the seed bears an official label issued for such seed by a seed certifying agency certifying that the seed is of a specified class and a specified kind or variety. *Seed of a variety for which a certificate of plant variety protection under the Plant Variety Protection Act specifies sale only as a class of certified seed shall be certified only when*

"(1) the basic seed from which the variety was produced was furnished by authority of the owner of the variety if the certification is made during the term of protection, and

"(2) it conforms to the number of generations designated by the certificate, if the certificate contains such a designation.

* * * * *

**TITLE V—SALE OF UNCERTIFIED SEED OF
PROTECTED VARIETY**

Section 501.

(a) It shall be unlawful in the United States or in interstate or foreign commerce to sell by variety name seed not certified by an official seed certifying agency when it is a variety for which a certificate of plant variety protection under the Plant Variety Protection Act specifies sale only as a class of certified seed: Provided, That seed from a certified lot may be labeled as to variety name when used in a mixture by, or with the approval of, the owner of the variety.



91ST CONGRESS
2^D SESSION

S. 3070

[Report No. 91-1605]

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 5, 1970

Referred to the Committee on Agriculture

OCTOBER 13, 1970

Committed to the Committee of the Whole House on the State of the Union
and ordered to be printed

AN ACT

To encourage the development of novel varieties of sexually reproduced plants and to make them available to the public, providing protection available to those who breed, develop, or discover them, and thereby promoting progress in agriculture in the public interest.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

INDEX

	Section
TITLE I —Plant Variety Protection Office.....	1
TITLE II —Protectability of Plant Varieties and Certificates of Protection	41
TITLE III—Plant Variety Protection and Rights.....	101

3 TITLE I—PLANT VARIETY PROTECTION OFFICE

Chapter	Section
1. Organization and Publications.....	1
2. Legal Provisions as to the Plant Variety Protection Office.....	21
3. Plant Variety Protection Fees.....	31

1 **Chapter 1.—ORGANIZATION AND PUBLICATIONS**

2 **Section 1. Establishment.**

3 There is hereby established in the Department of Agri-
4 culture a bureau to be known as the Plant Variety Protec-
5 tion Office, which shall have the functions set forth in this
6 Act.

7 **Sec. 2. Seal.**

8 The Plant Variety Protection Office shall have a seal
9 with which documents and certificates evidencing plant
10 variety protection shall be authenticated.

11 **Sec. 3. Organization.**

12 The organization of the Plant Variety Protection Office
13 shall, except as provided herein, be determined by the Secre-
14 tary of Agriculture (hereinafter called the Secretary). The
15 office shall devote itself substantially exclusively to the
16 administration of this Act.

17 **Sec. 4. Restrictions on Employees as to Interest in Plant**
18 **Variety Protection.**

19 Employees of the Plant Variety Protection Office shall
20 be ineligible during the periods of their employment, to apply
21 for plant variety protection and to acquire directly or in-
22 directly, except by inheritance or bequest, any right or
23 interest in any matters before that office. This section shall
24 not apply to members of the Plant Variety Protection Board

1 who are not otherwise employees of the Plant Variety Protec-
2 tion Office.

3 **Sec. 5. Bond of Employees.**

4 Such employees as the Secretary designates, before enter-
5 ing upon their duties, shall severally give bond, with sureties,
6 in sums prescribed by the Secretary, conditioned for the
7 faithful discharge of their respective duties and that they
8 shall render to the proper officers of the Treasury a true
9 account of all money received by virtue of their offices.

10 **Sec. 6. Regulations.**

11 The Secretary may establish regulations, not inconsistent
12 with law, for the conduct of proceedings in the Plant Variety
13 Protection Office after consultations with the Plant Variety
14 Protection Board.

15 **Sec. 7. Plant Variety Protection Board.**

16 (a) APPOINTMENT.—The Secretary shall appoint a
17 Plant Variety Protection Board. The Board shall consist
18 of individuals who are experts in various areas of varietal
19 development covered by this Act. Membership of the Board
20 shall include farmer representation and shall be drawn ap-
21 proximately equally from the private or seed industry sector
22 and from the sector of government or the public. The Secre-
23 tary or his designee shall act as chairman of the Board
24 without voting rights except in the case of ties.

1 (b) FUNCTIONS OF BOARD.—The functions of the
2 Plant Variety Protection Board shall include:

3 (1) Advising the Secretary concerning the adop-
4 tion of Rules and Regulations to facilitate the proper
5 administration of this Act;

6 (2) Making advisory decisions on all appeals from
7 the examiner. The Board shall determine whether to act
8 as a full Board or by panels it selects; and whether to
9 review advisory decisions made by a panel. For service
10 on such appeals, the Board may select, as temporary
11 members, experts in the area to which the particular
12 appeal relates; and

13 (3) Advising the Secretary on all questions under
14 section 44.

15 (c) COMPENSATION OF BOARD.—The members of the
16 Plant Variety Protection Board shall serve without compen-
17 sation except for standard government reimbursable expenses.

18 **Sec. 8. Library.**

19 The Secretary shall maintain a library of scientific
20 and other works and periodicals, both foreign and domestic,
21 in the Plant Variety Protection Office to aid the officers in
22 the discharge of their duties.

23 **Sec. 9. Register of Protected Plant Varieties.**

24 The Secretary shall maintain a register of published
25 specifications of United States protected plant varieties and

1 a file of such other scientific and technical information as may
2 be necessary or practicable.

3 **Sec. 10. Publications.**

4 (a) The Secretary may publish, or cause to be pub-
5 lished, in such format as he shall determine to be suitable, the
6 following:

7 (1) The specifications for plant variety protection
8 including drawings and photographs.

9 (2) The Official Journal of the Plant Variety Pro-
10 tection Office, including annual indices.

11 (3) Pamphlet copies of the plant variety protection
12 laws and rules of practice and circulars or other publi-
13 cations relating to the business of the Office.

14 (b) The Plant Variety Protection Office may print the
15 heading of the drawings or photographs for protected plant
16 varieties for the purpose of photolithography and may pro-
17 vide suitable copy for any lithography to appear on the
18 same page.

19 (c) The Secretary may (1) establish public facilities for
20 the searching of plant variety protection records and materi-
21 als, and (2) from time to time, as through an information
22 service, disseminate to the public those portions of the tech-
23 nological and other public information available to or within
24 the Plant Variety Protection Office to encourage innovation
25 and promote the progress of the useful arts.

1 (d) The Secretary may exchange any of the publications
2 specified for publications desirable for the use of the Plant
3 Variety Protection Office. The Secretary may exchange
4 copies of specifications, drawings, and photographs of United
5 States protected plant varieties for copies of specifications,
6 drawings, and photographs of applications and protected
7 plant varieties of foreign countries.

8 **Sec. 11. Copies for Public Libraries.**

9 The Secretary may supply printed copies of specifica-
10 tions, drawings, and photographs of protected plant varieties
11 to public libraries in the United States which shall maintain
12 such copies for the use of the public.

13 **Chapter 2.—LEGAL PROVISIONS AS TO THE PLANT**
14 **VARIETY PROTECTION OFFICE**

15 **Sec. 21. Day for Taking Action Falling on Saturday, Sun-**
16 **day, or Holiday.**

17 When the day, or the last day, for taking any action or
18 paying any fee in the United States Plant Variety Protection
19 Office falls on Saturday, Sunday, a holiday within the District
20 of Columbia, or on any other day the Plant Variety Protec-
21 tion Office is closed for the receipt of papers, the action may
22 be taken or the fee paid, on the next succeeding business day.

23 **Sec. 22. Form of Papers Filed.**

24 The Secretary may by regulations prescribe the form
25 of papers to be filed in the Plant Variety Protection Office.

1 **Sec. 23. Testimony in Plant Variety Protection Office**
2 **Cases.**

3 The Secretary may establish regulations for taking affi-
4 davits, depositions, and other evidence required in cases be-
5 fore the Plant Variety Protection Office. Any officer author-
6 ized by law to take depositions to be used in the courts of the
7 United States, or of the State where he resides, may take
8 such affidavits and depositions, and swear the witnesses. If
9 any person acts as a hearing officer by authority of the Secre-
10 tary, he shall have like power.

11 **Sec. 24. Subpenas, Witnesses.**

12 (a) The clerk of any United States court for the district
13 wherein testimony is to be taken in accordance with regula-
14 tions established by the Secretary for use in any contested
15 case in the Plant Variety Protection Office shall, upon the
16 application of any party thereof, issue a subpoena for any
17 witness residing or being within such district or within one
18 hundred miles of the stated place in such district, command-
19 ing him to appear and testify before an officer in such district
20 authorized to take depositions and affidavits, at the time and
21 place stated in the subpoena. The provisions of the Federal
22 Rules of Civil Procedure relating to the attendance of wit-
23 nesses and the production of documents and things shall apply
24 to contested cases in the Plant Variety Protection Office
25 insofar as consistent with such regulations.

1 (b) Every witness subpoenaed or testifying shall be al-
2 lowed the fees and traveling expenses allowed to witnesses
3 attending the United States district courts.

4 (c) A judge of a court whose clerk issued a subpoena
5 may enforce obedience to the process or punish disobedience
6 as in other like cases, on proof that a witness, served with
7 such subpoena, neglected or refused to appear or to testify.
8 No witness shall be deemed guilty of contempt for disobeying
9 such subpoena unless his fees and traveling expenses in going
10 to, and returning from, one day's attendance at the place
11 of examination, are paid or tendered him at the time of the
12 service of the subpoena; nor for refusing to disclose any
13 secret matter except upon appropriate order of the court
14 which issued the subpoena or of the Secretary.

15 **Sec. 25. Effect of Defective Execution.**

16 Any document to be filed in the Plant Variety Protec-
17 tion Office and which is required by any law or regulation to
18 be executed in a specified manner may be provisionally ac-
19 cepted by the Secretary despite a defective execution, pro-
20 vided a properly executed document is submitted within such
21 time as may be prescribed.

22 **Sec. 26. Regulations for Practice Before the Office.**

23 The Secretary shall prescribe regulations governing the
24 admission to practice and conduct of persons representing
25 applicants or other parties before the Plant Variety Pro-

1 tection Office. The Secretary may, after notice and oppor-
2 tunity for a hearing, suspend or exclude, either generally or
3 in any particular case, from further practice before the Of-
4 fice of Plant Variety Protection any person shown to be in-
5 competent or disreputable or guilty of gross misconduct.

6 **Sec. 27. Unauthorized Practice.**

7 Anyone who in the United States engages in direct or
8 indirect practice before the Office of Plant Variety Pro-
9 tection while suspended or excluded under section 26, or
10 without being admitted to practice before the Office, shall be
11 liable in a civil action for the return of all money received,
12 and for compensation for damage done by such person and
13 also may be enjoined from such practice. However, there
14 shall be no liability for damage if such person establishes that
15 the work was done competently and without negligence. This
16 section does not apply to anyone who, without a claim of
17 self-sufficiency, works under the supervision of another who
18 stands admitted and is the responsible party; nor to anyone
19 who establishes that he acted only on behalf of any employer
20 by whom he was regularly employed.

21 **Chapter 3.—PLANT VARIETY PROTECTION FEES**

22 **Sec. 31. Plant Variety Protection Fees; Appropriations.**

23 The Secretary shall, under such regulations as he may
24 prescribe, charge and collect reasonable fees for services per-
25 formed under this Act. The fees authorized by this section

1 shall be established to substantially cover the costs of admin-
 2 istration of this Act. Such fees shall be deposited into a fund
 3 to be available, without fiscal year limitation, for the admin-
 4 istration of this Act. The initial capital of the fund shall con-
 5 sist of appropriations, which are hereby authorized to be
 6 made. Until such time as the Secretary prescribes fees as
 7 provided by this section, a fee of \$50 shall be charged for
 8 filing each application, subject to such adjustment as may be
 9 appropriate after fees are prescribed by the Secretary
 10 hereunder.

11 **Sec. 32. Payment of Plant Variety Protection Fees; Re-**
 12 **turn of Excess Amounts.**

13 All fees shall be paid to the Secretary, and the Secretary
 14 may refund any sum paid by mistake or in excess of the fee
 15 required.

16 **TITLE II—PROTECTABILITY OF PLANT VARIETIES**
 17 **AND CERTIFICATES OF PROTECTION**

Chapter	Section
4. Protection of Plant Varieties-----	41
5. Applications: Form, Who May File, Relating Back, Confiden- tiality -----	51
6. Examination: Response Time, Initial Appeals-----	61
7. Appeals to Courts and Other Review-----	71
8. Certificates of Plant Variety Protection-----	81
9. Reexamination After Issue, and Contested Proceedings-----	91

18 **Chapter 4.—PROTECTABILITY OF PLANT**
 19 **VARIETIES**

20 **Sec. 41. Definitions and Rules of Construction.**

21 The definitions and rules of construction set forth in this
 22 section apply for the purposes of this Act.

1 (a) The term "novel variety" may be represented by,
2 without limitation, seed, transplants, and plants, and is satis-
3 fied if there is:

4 (1) Distinctness in the sense that the variety clearly
5 differs by one or more identifiable morphological, physio-
6 logical or other characteristics (which may include those
7 evidenced by processing or product characteristics, for
8 example, milling and baking characteristics in the case
9 of wheat) as to which a difference in genealogy may
10 contribute evidence, from all prior varieties of public
11 knowledge at the date of determination within the pro-
12 visions of section 42; and

13 (2) Uniformity in the sense that any variations are
14 describable, predictable and commercially acceptable;
15 and

16 (3) Stability in the sense that the variety, when
17 sexually reproduced or reconstituted, will remain un-
18 changed with regard to its essential and distinctive char-
19 acteristics with a reasonable degree of reliability com-
20 mensurate with that of varieties of the same category in
21 which the same breeding method is employed.

22 (b) The terms "United States" and "this country"
23 mean the United States of America, its territories and posses-
24 sions, and the Commonwealth of Puerto Rico.

25 (c) The term "kind" means one or more related species

1 or subspecies singly or collectively known by one common
2 name, for example, soybean, flax, or radish.

3 (d) The term “date of determination” means the date
4 when there has been at least tentative determination that
5 the variety has been sexually reproduced with recognized
6 characteristics, whether or not the novelty of those char-
7 acteristics has been determined.

8 (e) The term “breeder” shall mean the person who—

9 (1) directs the final breeding creating the novel
10 variety, or

11 (2) discovers the novel variety, and

12 makes the tentative determination described in subsection
13 (d). Where such actions are conducted by an agent on
14 behalf of his principal, the principal, rather than the agent,
15 shall be considered the breeder. The terms “breed”, “de-
16 velop”, “originate”, and “discover”, and derivatives thereof
17 shall each include the other.

18 (f) The term “sexually reproduced” shall include any
19 production of a variety by seed.

20 (g) The term “basic seed” means the seed planted to
21 produce certified or commercial seed.

22 (h) The term “testing” means testing or experimental
23 use of a variety before any sale thereof. Sale for other than
24 seed purposes of seed or other plant material produced as the
25 result of testing shall not constitute a sale for the purpose of

1 the preceding sentence or for the purpose of the following
2 subsection.

3 (i) The term "public variety" means a variety sold or
4 used in this country, or existing in and publicly known in
5 this country; but use for the purpose of testing, or sale or
6 use as individual plants not known to be sexually repro-
7 ducible, shall not make the variety a public variety.

8 (j) A variety described in a publication as specified in
9 section 42 (a) (1) (B) is "effectively available to workers in
10 this country" if a source from which it can be purchased is
11 indicated in such publication or readily determinable or if
12 such publication teaches how to produce the variety from
13 source-material effectively available to workers in this
14 country.

15 **Sec. 42. Right to Plant Variety Protection; Plant Varieties**
16 **Protectable.**

17 (a) The breeder of any novel variety of sexually re-
18 produced plant (other than fungi, bacteria, or first genera-
19 tion hybrids) who has so reproduced the variety, or his
20 successor in interest, shall be entitled to plant variety pro-
21 tection therefor, subject to the conditions and requirements
22 of this title unless one of the following bars exists:

23 (1) Before the date of determination thereof by the
24 breeder, or more than one year before the effective filing
25 date of the application therefor, the variety was (A) a

1 public variety in this country, or (B) effectively avail-
2 able to workers in this country and adequately described
3 by a publication reasonably deemed a part of the public
4 technical knowledge in this country which description
5 must include a disclosure of the principal characteristics
6 by which the variety is distinguished.

7 (2) An application for protection of the variety
8 based on the same breeder's acts, was filed in a foreign
9 country by the owner or his privies more than one year
10 before the effective filing date of the application filed in
11 the United States.

12 (3) Another is entitled to an earlier date of de-
13 termination for the same variety and such other (A)
14 has a certificate of plant variety protection hereunder
15 or (B) has been engaged in a continuing program of
16 development and testing to commercialization, or (C)
17 has within six months after such earlier date of deter-
18 mination adequately described the variety by a publica-
19 tion reasonably deemed a part of the public technical
20 knowledge in this country which description must in-
21 clude a disclosure of the principal characteristics by
22 which the variety is distinguished.

23 (b) The Secretary may, by regulation, extend for a
24 reasonable period of time the one year time period provided
25 in subsection (a) for filing applications, and may in that

1 event provide for at least commensurate reduction of the
2 term of protection.

3 **Sec. 43. Reciprocity Limits.**

4 Protection under the Act may, by regulation, be limited
5 to nationals of the United States, except where this limitation
6 would violate a treaty and except that nationals of a foreign
7 state in which they are domiciled shall be entitled to so much
8 of the protection here afforded as is afforded by said foreign
9 state to nationals of the United States for the same genus
10 and species.

11 **Sec. 44. Public Interest In Wide Usage.**

12 The Secretary may declare a protected variety open to
13 use on a basis of equitable remuneration to the owner, not
14 less than a reasonable royalty, when he determines that such
15 declaration is necessary in order to insure an adequate sup-
16 ply of fiber, food, or feed in this country and that the owner
17 is unwilling or unable to supply the public needs for the
18 variety at a price which may reasonably be deemed fair.
19 Such declaration may be, with or without limitation, with or
20 without designation of what the remuneration is to be; and
21 shall be subject to review as under section 71 or 72 (any
22 finding that the price is not reasonable being reviewable),
23 and shall remain in effect not more than two years. In the
24 event litigation is required to collect such remuneration, a
25 higher rate may be allowed by the court.

1 Chapter 5.—APPLICATIONS: FORM, WHO MAY FILE,
2 RELATING BACK, CONFIDENTIALITY

3 Sec. 51. Application for Recognition of Plant Variety
4 Rights.

5 (a) An application for a certificate of Plant Variety
6 Protection may be filed by the owner of the variety sought to
7 be protected. The application shall be made in writing to the
8 Secretary, shall be signed by or on behalf of the applicant,
9 and shall be accompanied by the prescribed fee.

10 (b) An error as to the naming of the breeder, without
11 deceptive intent, may be corrected at any time, in accordance
12 with regulations established by the Secretary.

13 Sec. 52. Content of Application.

14 An application for a certificate recognizing plant variety
15 rights shall contain:

16 (1) The name of the variety except that a tempo-
17 rary designation will suffice until the certificate is to be
18 issued.

19 (2) A description of the variety setting forth its
20 novelty and a description of the genealogy and breeding
21 procedure, when known. The Secretary may require
22 amplification, including the submission of adequate pho-
23 tographs or drawings or plant specimens, if the descrip-
24 tion is not adequate or as complete as is reasonably pos-
25 sible, and submission of records or proof of ownership

1 or of allegations made in the application. An applicant
2 may add to or correct the description at any time, before
3 the certificate is issued, upon a showing acceptable to the
4 Secretary that the revised description is retroactively
5 accurate. Courts shall protect others from any injustice
6 which would result. The Secretary may accept records
7 of the breeder and of any official seed certifying agency
8 in this country as evidence of stability where applicable.

9 (3) A declaration that a viable sample of basic
10 seed necessary for propagation of the variety will be
11 deposited and replenished periodically in a public reposi-
12 tory in accordance with regulations to be established
13 hereunder. This declaration may be added by
14 amendment.

15 (4) A statement of the basis of applicant's
16 ownership.

17 **Sec. 53. Joint Breeders.**

18 (a) When two or more persons are the breeders, one
19 (or his successor) may apply, naming the others.

20 (b) The Secretary, after such notice as he may pre-
21 scribe, may issue a certificate of plant variety protection to
22 the applicant and such of the other breeders (or their suc-
23 cessors in interest) as may have subsequently joined in the
24 application.

1 **Sec. 54. Death or Incapacity of Breeder.**

2 Legal representatives of deceased breeders and of those
3 under legal incapacity may make application for plant vari-
4 ety protection upon compliance with the requirements and
5 on the same terms and conditions applicable to the breeder
6 or his successor in interest.

7 **Sec. 55. Benefit of Earlier Filing Date.**

8 (a) An application for a certificate of plant variety
9 protection filed in this country based on the same variety,
10 and on rights derived from the same breeder, on which
11 there has previously been filed an application for plant
12 variety protection in a foreign country which affords similar
13 privileges in the case of applications filed in the United
14 States by nationals of the United States, shall have the same
15 effect as the same application would have if filed in the
16 United States on the date on which the application for plant
17 variety protection for the same variety was first filed in
18 such foreign country, if the application in this country is
19 filed within twelve months from the earliest date on which
20 such foreign application was filed. No application shall be
21 entitled to a right of priority under this section, unless the
22 applicant designates the foreign application in his appli-
23 cation or by amendment thereto and, if required by the
24 Secretary, furnishes such copy, translation or both, as the
25 Secretary may specify.

1 (b) An application for a certificate of plant variety pro-
2 tection for the same variety as was the subject of an applica-
3 tion previously filed in the United States by or on behalf of
4 the same person, or by his predecessor in title, shall have the
5 same effect as to such variety as though filed on the date of
6 the prior application if filed before the issuance of the certifi-
7 cate or other termination of proceedings on the first appli-
8 cation or on an application similarly entitled to the benefit of
9 the filing date of the first application and if it contains or is
10 amended to contain a specific reference to the earlier filed
11 application.

12 (c) A later application shall not by itself establish that
13 a characteristic newly described was in the variety at the
14 time of the earlier application.

15 **Sec. 56. Confidential Status of Application.**

16 Applications for plant variety protection and their con-
17 tents shall be kept in confidence by the Plant Variety Pro-
18 tection Office, by the Board, and by the offices in the Depart-
19 ment of Agriculture to which access may be given under
20 regulations. No information concerning the same shall be
21 given without the authority of the owner, unless necessary
22 under special circumstances as may be determined by the
23 Secretary, except that the Secretary may publish the variety
24 names designated in applications, stating the kind to which
25 each applies.

1 **Sec. 57. Publication.**

2 The Secretary may establish regulations for the publica-
3 tion of any pending application when publication is requested
4 by the owner.

5 **Chapter 6.—EXAMINATION, RESPONSE TIME,**
6 **INITIAL APPEALS**

7 **Sec. 61. Examination of Application.**

8 The Secretary shall cause an examination to be made of
9 the application and if on such examination it is determined
10 that the applicant is entitled to plant variety protection under
11 the law, the Secretary shall issue a notice of allowance of
12 plant variety protection therefor as hereinafter provided.

13 **Sec. 62. Notice of Refusal; Reconsideration.**

14 (a) Whenever an application is refused, or any objection
15 or requirement made by the examiner, the Secretary shall
16 notify the applicant thereof, stating the reasons therefor, to-
17 gether with such information and references as may be useful
18 in judging the propriety of continuing the prosecution of the
19 application; and if after receiving such notice the applicant
20 requests reconsideration, with or without amendment, the
21 application shall be reconsidered.

22 (b) For taking appropriate action after the mailing
23 to him of an action other than allowance, an applicant shall
24 be allowed six months, or such other time as the Secretary

1 in exceptional circumstances shall set in the refusal, or such
2 time as he may allow as an extension. Without such exten-
3 sion, action may be taken up to three months late by paying
4 an additional fee to be prescribed by the Secretary.

5 **Sec. 63. Initial Appeal.**

6 When an application for plant variety protection has
7 been refused by the Plant Variety Protection Office, the ap-
8 plicant may appeal to the Secretary. The Secretary shall
9 seek the advice of the Plant Variety Protection Board on
10 all appeals, before deciding the appeal.

11 **Chapter 7.—APPEALS TO COURTS AND OTHER**
12 **REVIEW.**

13 **Sec. 71. Appeals.**

14 From the decisions made under sections 44, 63, 91,
15 92, and 128 appeal may, within sixty days or such further
16 time as the Secretary allows, be taken under the Federal
17 Rules of Appellate Procedure. The Court of Customs and
18 Patent Appeals and United States Courts of Appeals shall
19 have jurisdiction, with venue in the case of the latter as stated
20 in 28 U.S.C. 2343.

21 **Sec. 72. Civil Action Against Secretary.**

22 An applicant dissatisfied with a decision under section 63
23 or 91 of this title, may, as an alternative to appeal, have

1 remedy by civil action against the Secretary in the United
2 States District Court for the District of Columbia. Such
3 action shall be commenced within sixty days after such deci-
4 sion or within such further time as the Secretary allows. The
5 court may, in the case of review of a decision by the Secre-
6 tary refusing plant variety protection, adjudge that such
7 applicant is entitled to receive a certificate of plant variety
8 protection for his variety as specified in his application as the
9 facts of the case may appear, on compliance with the require-
10 ments of this Act.

11 **Sec. 73. Appeal or Civil Action in Contested Cases.**

12 (a) A party to a proceeding under section 92 of this
13 title, dissatisfied with the decision, may take an appeal under
14 section 71 or may have remedy by civil action if commenced
15 within sixty days after such decision or within such further
16 time as the Secretary allows. A party contemplating appeal
17 as provided herein shall notify all adverse parties of his in-
18 tention and any such adverse party, not the Secretary, shall
19 have the right, by notice served within ten days of the notice
20 to him, to elect that any review shall be by civil action. In
21 such suits the record in the Plant Variety Protection Office
22 shall be admitted on motion of any party upon the terms
23 and conditions as to costs, expenses, and the further cross-
24 examination of witnesses, as the court imposes, without prej-

1 udice to the right of the parties to take further testimony.
2 The testimony and exhibits of the record in the Plant Variety
3 Protection Office when admitted shall have the same effect as
4 if originally taken and produced in the suit.

5 (b). Such suit may be instituted against the party in
6 interest as shown by the record of the Plant Variety Protec-
7 tion Office at the time of the decision complained of, but any
8 party in interest may become a party to the action. If there
9 be adverse parties residing in a plurality of districts not em-
10 braced within the same State, or an adverse party residing
11 in a foreign country, the United States District Court for the
12 District of Columbia, or any United States district court to
13 which it may transfer the case, shall have jurisdiction and
14 may issue summons against the adverse parties directed to
15 the marshal of any district in which any adverse party
16 resides. Summons against adverse parties residing in foreign
17 countries may be served by publication or otherwise as the
18 court directs. The Secretary shall not be made a party but
19 he shall have the right to intervene. Judgment of the court
20 in favor of the right of an applicant to plant variety pro-
21 tection shall authorize the Secretary to issue a certificate of
22 plant variety protection on the filing in the Plant Variety
23 Protection Office of a certified copy of the judgment and on
24 compliance with the requirements of this Act.

1 **Chapter 8.—CERTIFICATES OF PLANT VARIETY**
2 **PROTECTION**

3 **Sec. 81. Plant Variety Protection.**

4 (a) If it appears that a certificate of plant variety pro-
5 tection should be issued on an application, a written notice of
6 allowance shall be given or mailed to the owner. The notice
7 shall specify the sum, constituting the issue fee, which shall
8 be paid within one month thereafter.

9 (b) Upon timely payment of this sum, and provided
10 that deposit of seed has been made in accordance with sec-
11 tion 52 (3), the certificate of plant variety protection shall
12 issue.

13 (c) If any payment required by this section is not timely
14 made, but is submitted with an additional fee prescribed by
15 the Secretary within nine months after the due date or within
16 such further time as the Secretary may allow, it shall be
17 accepted.

18 **Sec. 82. How Issued.**

19 A certificate of plant variety protection shall be issued
20 in the name of the United States of America under the seal
21 of the Plant Variety Protection Office, and shall be signed
22 by the Secretary or have his signature placed thereon, and
23 shall be recorded in the Plant Variety Protection Office.

24 **Sec. 83. Contents and Term of Plant Variety Protection.**

25 (a) Every certificate of plant variety protection shall

1 certify that the breeder (or his successor in interest) his heirs
2 or assignees, has the right, during the term of the plant
3 variety protection, to exclude others from selling the variety,
4 or offering it for sale, or reproducing it, or importing it,
5 or exporting it, or using it in producing (as distinguished
6 from developing) a hybrid or different variety therefrom,
7 to the extent provided by this Act. If the owner so elects,
8 the certificate shall also specify that in the United States
9 seed of the variety shall be sold by variety name only as
10 a class of certified seed and, if specified, shall also conform
11 to the number of generations designated by the owner.
12 Any rights, or all rights except those elected under the
13 preceding sentence, may be waived; and the certificate
14 shall conform to such waiver. The Secretary may at his
15 discretion permit such election or waiver to be made after
16 certifying and amend the certificate accordingly, without
17 retroactive effect.

18 (b) The term of plant variety protection shall expire
19 seventeen years from the date of issue of the certificate in
20 the United States. If the certificate is not issued within three
21 years from the effective filing date, the Secretary may shorten
22 the term by the amount of delay in the prosecution of the
23 application attributed by the Secretary to the applicant.

24 (c) The term of plant variety protection shall also ex-

pire if the owner fails to comply with regulations, in force at the time of certificating, relating to replenishing seed in a public repository: *Provided, however,* That this expiration shall not occur unless notice is mailed to the last owner recorded as provided in section 101 (d) and he fails, within the time allowed thereafter, not less than three months, to comply with said regulations, paying an additional fee to be prescribed by the Secretary.

Sec. 84. Certificate of Correction of Plant Variety Protection Office Mistake.

Whenever a mistake in a certificate of plant variety protection, incurred through the fault of the Plant Variety Protection Office, is clearly disclosed by the records of the Office, the Secretary may issue a certificate of correction stating the fact and nature of such mistake, under seal, without charge, to be recorded in the records of plant variety protection. A copy thereof shall be attached to each copy of the published specifications or certificate of plant variety protection and such certificate of correction shall be considered as part of the original certificate of plant variety protection. Every such certificate of plant variety protection shall have the same effect as if the same had been originally issued in such corrected form. The Secretary may issue a

1 corrected certificate of plant variety protection without charge
2 in lieu of and with like effect as a certificate of correction.

3 **Sec. 85. Certificate of Correction of Applicant's Mistake.**

4 Whenever a mistake of a clerical or typographical na-
5 ture, or of minor character, or in the description of the
6 variety, which was not the fault of the Plant Variety Pro-
7 tection Office, appears in a certificate of plant variety pro-
8 tection and a showing has been made that such mistake oc-
9 curred in good faith, the Secretary may, upon payment of
10 the required fee, issue a certificate of correction in the manner
11 and with attachment of copies as in section 84, if the correc-
12 tion unquestionably could have been made before the certifi-
13 cate issued. Such certificate of plant variety protection shall
14 have the same effect and operation in law on the trial of ac-
15 tions for causes thereafter arising as if the same had been
16 originally issued in such corrected form.

17 **Sec. 86. Correction of Named Breeder.**

18 An error as to the naming of a breeder in the applica-
19 tion, without deceptive intent, shall not affect validity of
20 plant variety protection and may be corrected at any time by
21 the Secretary in accordance with regulations established by
22 him or upon order of a federal court before which the matter
23 is called in question. Upon such correction the Secretary shall

1 issue a certificate accordingly. Such correction shall not de-
2 prive any person of any rights he otherwise would have had.

3 **Chapter 9.—REEXAMINATION AFTER ISSUE, AND**
4 **CONTESTED PROCEEDINGS**

5 **Sec. 91. Reexamination After Issue.**

6 (a) Any person may, within five years after the issu-
7 ance of a certificate of plant variety protection, notify the
8 Secretary in writing of facts which may have a bearing on
9 the protectability of the variety, and the Secretary may cause
10 such plant variety protection to be reexamined in the light
11 thereof.

12 (b) Reexamination of plant variety protection under
13 this section and appeals shall be pursuant to the same pro-
14 cedures and with the same rights as for original examina-
15 tions. Abandonment of the procedure while subject to a rul-
16 ing against the retention of the certificate shall result in can-
17 cellation of the plant variety certificate thereon and notice
18 thereof shall be endorsed on copies of the specification of the
19 protected plant variety thereafter distributed by the Plant
20 Variety Protection Office.

21 (c) If a person acting under subsection (a) makes a
22 prima facie showing of facts needing proof, the Secretary

1 may direct that the reexamination include such interparty
2 proceedings as he shall establish.

3 **Sec. 92. Priority Contest.**

4 (a) If the Secretary determines that two applications
5 of different applicants may be based on the same variety,
6 he may:

7 (1) Initiate a priority contest on his own motion
8 whether or not one of the applications may have been
9 certificated; or

10 (2) Issue a certificate on the application having the
11 earliest effective filing date, with notice to all; or

12 (3) Issue a certificate naming alternative owners,
13 under a single variety name acceptable to both.

14 (b) On request of any person when a certificate has
15 been issued naming another as an owner or alternative
16 owner, both having applied for protection on the same va-
17 riety, the Secretary shall institute a priority contest, except
18 that any person shall have forfeited his right to assert pri-
19 ority for the purpose of obtaining plant variety protection
20 when an adverse certificate has issued if he fails to make
21 the request within one year of the mailing of notice specified
22 in part (2) above or if he fails to make the request within

1 the period for taking action after refusal of his applica-
2 tion on the basis of the adverse certificate.

3 **Sec. 93. Effect of Adverse Final Judgment or of Non**
4 **Action.**

5 (a) A final judgment under section 92 adverse to an
6 application from which no appeal or other review had been
7 or can be taken or had shall constitute cancellation of any
8 certifying on that application, and notice thereof shall be
9 endorsed on copies of the specifications of the protected plant
10 variety thereafter distributed by the Plant Variety Protection
11 Office.

12 (b) Any person who has not proceeded in accordance
13 with the provision of this chapter shall not be foreclosed or
14 in any way prejudiced with respect to the defense of an
15 infringement suit or affirmative relief under declaratory judg-
16 ment proceedings.

17 (c) No person subject to an adverse decision in a pro-
18 ceeding under this chapter shall be foreclosed with respect to
19 asserting comparable grounds in defense of an infringement
20 suit or as a basis for affirmative relief under declaratory judg-
21 ment proceedings.

22 **Sec. 94. Interfering Plant Variety Protection.**

23 The owner of a certificate of plant variety protection
24 may have relief against another owner of a certificate of
25 the same variety by civil action, and the court may adjudge

1 the question of validity of the respective certificates, or the
 2 ownership of the certificate. The provisions of section 73 (b)
 3 of this title shall apply to actions brought under this section.

4 **TITLE III—PLANT VARIETY PROTECTION AND**
 5 **RIGHTS**

Chapter	Section
10. Ownership and Assignment.....	101
11. Infringement of Plant Variety Protection.....	111
12. Remedies for Infringement of Plant Variety Protection, and Other Actions	121
13. Intent and Severability.....	131
14. Temporary Provision and Related Enactments; Exempted Plants; Miscellaneous	141

6 **Chapter 10.—OWNERSHIP AND ASSIGNMENT**

7 **Sec. 101. Ownership and Assignment.**

8 (a) Subject to the provisions of this title, plant variety
 9 protection shall have the attributes of personal property.

10 (b) Applications for certificates of plant variety protec-
 11 tion, or any interest in a variety, shall be assignable by an
 12 instrument in writing. The owner may in like manner license
 13 or grant and convey an exclusive right to use of the variety
 14 in the whole or any specified part of the United States.

15 (c) A certificate of acknowledgment under the hand
 16 and official seal of a person authorized to administer oaths
 17 within the United States, or in a foreign country, of a diplo-
 18 matic or consular officer of the United States or an officer
 19 authorized to administer oaths whose authority is proved by
 20 a certificate of a diplomatic or consular officer of the United
 21 States, shall be prima facie evidence of the execution of an

1 assignment, grant, license, or conveyance of plant variety
2 protection or application for plant variety protection.

3 (d) An assignment, grant, conveyance or license shall
4 be void as against any subsequent purchaser or mortgagee for
5 a valuable consideration, without notice, unless it, or an
6 acknowledgment thereof by the person giving such encum-
7 brance that there is such encumbrance, is filed for recording
8 in the Plant Variety Protection Office within one month from
9 its date or at least one month prior to the date of such subse-
10 quent purchase or mortgage.

11 **Sec. 102. Ownership During Testing.**

12 An owner who, with notice that release is for testing
13 only, releases possession of seed or other sexually reproducible
14 plant material for testing retains ownership with respect
15 thereto; and any diversion from authorized testing, or any
16 unauthorized retention, of such material by anyone who has
17 knowledge that it is under such notice, or who is chargeable
18 with notice, is prohibited, and violates the property rights
19 of the owner. Anyone receiving the material tagged or
20 labeled with the notice is chargeable with the notice. The
21 owner is entitled to remedy and redress in a civil action here-
22 under. No remedy available by State or local law is hereby
23 excluded. No such notice shall be used, or if used be effective,
24 when the owner has made identical sexually reproducible
25 plant material available to the public, as by sale thereof.

1 Chapter 11.—INFRINGEMENT OF PLANT VARIETY
2 PROTECTION

3 Sec. 111. Infringement of Plant Variety Protection.

4 Except as otherwise provided in this title, it shall be an
5 infringement of the rights of the owner of a novel variety to
6 perform without authority, any of the following acts in the
7 United States, or in commerce which can be regulated by
8 Congress or affecting such commerce, prior to expiration of
9 the right to plant variety protection but after either the issue
10 of the certificate or the distribution of a novel plant variety
11 with the notice under section 127:

12 (1) sell the novel variety, or offer it or expose it for
13 sale, deliver it, ship it, consign it, exchange it, or solicit
14 an offer to buy it, or any other transfer of title or pos-
15 session of it;

16 (2) import the novel variety into, or export it from,
17 the United States;

18 (3) sexually multiply the novel variety as a step in
19 marketing (for growing purposes) the variety; or

20 (4) use the novel variety in producing (as distin-
21 guished from developing) a hybrid or different variety
22 therefrom; or

23 (5) use seed which had been marked "propagation
24 prohibited" or progeny thereof to propagate the novel
25 variety; or

1 (6) dispense the novel variety to another, in a
2 form which can be propagated, without notice as to
3 being a protected variety under which it was received;
4 or

5 (7) perform any of the foregoing acts even in
6 instances in which the novel variety is multiplied other
7 than sexually, except in pursuance of a valid United
8 States plant patent; or

9 (8) instigate or actively induce performance of any
10 of the foregoing acts.

11 **Sec. 112. Grandfather Clause.**

12 Nothing in this Act shall abridge the right of any per-
13 son, or his successor in interest, to reproduce or sell a variety
14 developed and produced by such person more than one year
15 prior to the effective filing date of an adverse application for
16 a certificate of plant variety protection.

17 **Sec. 113. Right To Save Seed; Crop Exemption.**

18 Except to the extent that such action may constitute an
19 infringement under subsections (3) and (4) of section 111,
20 it shall not infringe any right hereunder for a person to save
21 seed produced by him from seed obtained, or descended from
22 seed obtained, by authority of the owner of the variety for
23 seeding purposes and use such saved seed in the production of
24 a crop for use on his farm, or for sale as provided in this
25 section: *Provided*, That without regard to the provisions of

1 section 111 (3) it shall not infringe any right hereunder for
2 a person, whose primary farming occupation is the growing
3 of crops for sale for other than reproductive purposes, to sell
4 such saved seed to other persons so engaged, for reproductive
5 purposes, provided such sale is in compliance with such State
6 laws governing the sale of seed as may be applicable. A bona
7 fide sale for other than reproductive purposes, made in chan-
8 nels usual for such other purposes, of seed produced on a
9 farm either from seed obtained by authority of the owner for
10 seeding purposes or from seed produced by descent on such
11 farm from seed obtained by authority of the owner for seed-
12 ing purposes shall not constitute an infringement. A pur-
13 chaser who diverts seed from such channels to seeding pur-
14 poses shall be deemed to have notice under section 127 that
15 his actions constitute an infringement.

16 **Sec. 114. Research Exemption.**

17 The use and reproduction of a protected variety for plant
18 breeding or other bona fide research shall not constitute an
19 infringement of the protection provided under this Act.

20 **Sec. 115. Intermediary Exemption.**

21 Transportation or delivery by a carrier in the ordinary
22 course of its business as a carrier, or advertising by a person
23 in the advertising business in the ordinary course of that busi-
24 ness, shall not constitute an infringement of the protection
25 provided under this Act.

1 Chapter 12.—REMEDIES FOR INFRINGEMENT OF
2 PLANT VARIETY PROTECTION, AND OTHER
3 ACTIONS

4 Sec. 121. Remedy for Infringement of Plant Variety Pro-
5 tection.

6 An owner shall have remedy by civil action for in-
7 fringement of his plant variety protection under section 111.
8 If a variety is sold under the name of a variety shown in
9 a certificate, there is a prima facie presumption that it is
10 the same variety.

11 Sec. 122. Presumption of Validity; Defenses.

12 (a) Certificates of plant variety protection shall be pre-
13 sumed valid. The burden of establishing invalidity of a plant
14 variety protection shall rest on the party asserting invalidity.

15 (b) The following shall be defenses in any action charg-
16 ing infringement and shall be pleaded: (1) noninfringement,
17 absence of liability for infringement, or unenforceability; (2)
18 invalidity of the plant variety protection in suit on any
19 ground specified in section 42 of this title as a condition for
20 protectability; (3) invalidity of the plant variety protection
21 in suit for failure to comply with any requirement of section
22 52; (4) that the asserted infringement was performed un-
23 der an existing certificate adverse to that asserted and prior

1 to notice of the infringement; and (5) any other fact or
2 act made a defense by this Act.

3 **Sec. 123. Injunction.**

4 The several courts having jurisdiction of cases under this
5 title may grant injunctions in accordance with the principles
6 of equity to prevent the violation of any right hereunder on
7 such terms as the court deems reasonable.

8 **Sec. 124. Damages.**

9 (a) Upon finding an infringement the court shall award
10 damages adequate to compensate for the infringement but in
11 no event less than a reasonable royalty for the use made
12 of the variety by the infringer, together with interest and
13 costs as fixed by the court.

14 (b) When the damages are not determined by the jury,
15 the court shall determine them. In either event the court may
16 increase the damages up to three times the amount deter-
17 mined.

18 (c) The court may receive expert testimony as an aid
19 to the determination of damages or of what royalty would be
20 reasonable under the circumstances.

21 (d) As to infringement prior to, or resulting from a
22 planting prior to, issuance of a certificate for the infringed
23 variety, a court finding the infringer to have established

1 innocent intentions, shall have discretion as to awarding
2 damages.

3 **Sec. 125. Attorney Fees.**

4 The court in exceptional cases may award reasonable
5 attorney fees to the prevailing party.

6 **Sec. 126. Time Limitation on Damages.**

7 (a) No recovery shall be had for that part of any
8 infringement committed more than six years (or known to
9 the owner more than one year) prior to the filing of the
10 complaint or counterclaim for infringement in the action.

11 (b) In the case of claims against the United States
12 Government for unauthorized use of a protected variety, the
13 period between the date of receipt of written claim for com-
14 pensation by the department or agency of the Government
15 having authority to settle such claim, and the date of mail-
16 ing by the Government of a notice to the claimant that his
17 claim has been denied shall not be counted as part of the
18 period referred to in the preceding paragraph.

19 **Sec. 127. Limitation of Damages; Marking and Notice.**

20 Owners may give notice to the public by physically
21 associating with or affixing to the container of seed of a novel
22 variety or by fixing to the novel variety, a label containing
23 the words "Propagation Prohibited" and after the certificate
24 issues, such additional words as "U.S. Protected Variety".
25 In the event the novel variety is distributed by authorization

1 of the owner and is received by the infringer without such
2 marking, no damages shall be recovered against such in-
3 fringer by the owner in any action for infringement, unless
4 the infringer has actual notice or knowledge that propaga-
5 tion is prohibited or that the variety is a protected variety, in
6 which event damages may be recovered only for infringe-
7 ment occurring after such notice. As to both damages and in-
8 junction, a court shall have discretion to be lenient as to
9 disposal of materials acquired in good faith by acts prior to
10 such notice.

11 **Sec. 128. False Marking; Cease and Desist Orders.**

12 (a) Each of the following acts, if performed in connec-
13 tion with the sale, offering for sale, or advertising of sexually
14 reproducible plant material, is prohibited, and the Secretary
15 may, if he determines after an opportunity for hearing that
16 the act is being so performed, issue an order to cease and
17 desist, said order being binding unless appealed under
18 section 71:

19 (1) Use of the words "U.S. Protected Variety"
20 or any word or number importing that the material is
21 a variety protected under certificate, when it is not.

22 (2) Use of any wording importing that the mate-
23 rial is a variety for which an application for plant variety
24 protection is pending, when it is not.

25 (3) Use of the phrase "propagation prohibited" or

1 similar phrase without reasonable basis, a statement of
2 this basis being promptly filed with the Secretary if the
3 phrase is used beyond testing and no application has
4 been filed. Any reasonable basis expires one year after
5 the first sale of the variety except as justified thereafter
6 by a pending application or a certificate still in force.

7 (b) Anyone convicted of violating a binding cease and
8 desist order, or of performing any act prohibited in sub-
9 section (a) of this section for the purpose of deceiving the
10 public, shall be fined not more than \$10,000 and not less
11 than \$500.

12 (c) Anyone whose business is damaged or is likely to
13 be damaged by an act prohibited in subsection (a) of this
14 section, or is subjected to competition in connection with
15 which such act is performed, may have remedy by civil
16 action.

17 **Sec. 129. Nonresident Proprietors; Service and Notice.**

18 Every owner not residing in the United States may file
19 in the Plant Variety Protection Office a written designation
20 stating the name and address of a person residing within
21 the United States on whom may be served process or
22 notice of proceedings affecting the plant variety protection
23 or rights thereunder. If the person designated cannot be
24 found at the address given in the last designation, or if no
25 person has been designated, the United States District Court

1 for the District of Columbia shall have jurisdiction and sum-
2 mons shall be served by publication or otherwise as the court
3 directs. The court shall have the same jurisdiction to take
4 any action respecting the plant variety protection, or rights
5 thereunder that it would have if the owner were personally
6 within the jurisdiction of the court.

7 Chapter 13.—INTENT AND SEVERABILITY

8 Sec. 131. Intent.

9 It is the intent of Congress to provide the indicated
10 protection for new varieties by exercise of any constitutional
11 power needed for that end, so as to afford adequate encour-
12 agement for research, and for marketing when appropriate,
13 to yield for the public the benefits of new varieties. Consti-
14 tutional clauses 3 and 8 of article I, section 8 are both relied
15 upon.

16 Sec. 132. Severability.

17 If this Act is held unconstitutional as to some provisions
18 or circumstances, it shall remain in force as to the remaining
19 provisions and other circumstances.

20 Chapter 14.—TEMPORARY PROVISION AND RE- 21 LATED ENACTMENTS; EXEMPTED PLANTS; 22 MISCELLANEOUS

23 Sec. 141. Effective Date.

24 This Act shall take effect upon enactment. Applications
25 may be filed with the Secretary and held by him until the

1 Office of Plant Variety Protection is organized and in oper-
2 ation.

3 **Sec. 142. Amendment of Federal Seed Act.**

4 The Federal Seed Act (53 Stat. 1275) is amended as
5 follows:

6 (a) By adding at the end thereof:

7 **“TITLE V—SALE OF UNCERTIFIED SEED OF**
8 **PROTECTED VARIETY**

9 **“Section 501.**

10 “(a) It shall be unlawful in the United States or in in-
11 terstate or foreign commerce to sell by variety name seed not
12 certified by an official seed certifying agency when it is a
13 variety for which a certificate of plant variety protection
14 under the Plant Variety Protection Act specifies sale only
15 as a class of certified seed: *Provided*, That seed from a certi-
16 fied lot may be labeled as to variety name when used in a mix-
17 ture by, or with the approval of, the owner of the variety.”

18 (b) By adding at the end of section 102 the following
19 wording: “Seed of a variety for which a certificate of plant
20 variety protection under the Plant Variety Protection Act
21 specifies sale only as a class of certified seed shall be certified
22 only when

23 “(1) the basic seed from which the variety was pro-
24 duced was furnished by authority of the owner of the

1 variety if the certification is made during the term of
2 protection, and

3 “(2) it conforms to the number of generations
4 designated by the certificate, if the certificate contains
5 such a designation.”.

6 **Sec. 143. Amendment of Judicial Code.**

7 Title 28 of the United States Code, entitled Judicial
8 Code and Judiciary, is amended as follows:

9 (a) After section 1544 add:

10 **“Sec. 1545. Decision of the Plant Variety Protection Office.**

11 “The Court of Customs and Patent Appeals shall have
12 nonexclusive jurisdiction of appeals under section 71 of
13 the Plant Variety Protection Act.”

14 (b) In section 1338 after “Patents” in the heading,
15 after “patents” and after “patent” (both occurrences) insert
16 “, plant variety protection”.

17 (c) After section 2351 add:

2353. The Court of appeals has nonexclusive jurisdiction to hear appeals
under section 71 of the Plant Variety Protection Act.

18 **Sec. 144. Exempted Plants.**

19 The provisions of this Act shall not apply to the seeds,
20 plants, or transplants of okra, celery, peppers, tomatoes,
21 carrots, and cucumbers.

1 Sec. 145. Short Title.

2 This Act may be cited as the "Plant Variety Protection
3 Act".

Passed the Senate October 2, 1970.

Attest:

FRANCIS R. VALEO,

Secretary.

91ST CONGRESS
2D SESSION

Union Calendar No. 76

S. 3070

[Report No. 91-1605]

AN ACT

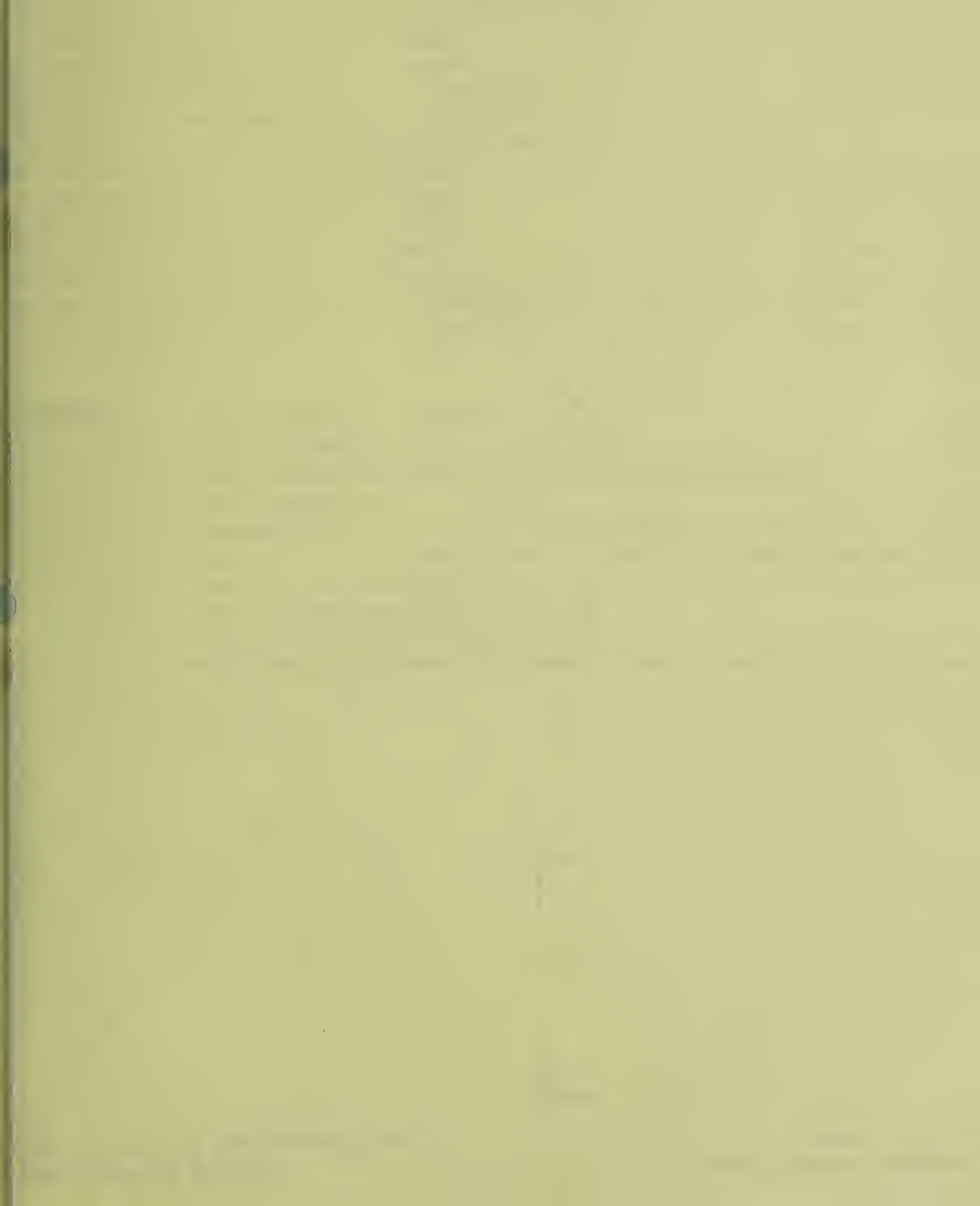
To encourage the development of novel varieties of sexually reproduced plants and to make them available to the public, providing protection available to those who breed, develop, or discover them, and thereby promoting progress in agriculture in the public interest.

OCTOBER 5, 1970

Referred to the Committee on Agriculture

OCTOBER 13, 1970

Committed to the Committee of the Whole House on the State of the Union and ordered to be printed



DIGEST of Congressional Proceedings

OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

OFFICE OF BUDGET AND FINANCE
(FOR INFORMATION ONLY;
NOT TO BE QUOTED OR CITED)

For actions of December 1, 1970
91st-2nd; No.191

CONTENTS

Agricultural appropriations.....11	Egg products.....3	Planning districts.....6
Agricultural exports.....12	Eggs.....18	Plant variety protection.....4
Agricultural prices.....7	Farmers.....14	Reports.....6
Agriculture Committee	Farmworkers.....13	River basin.....1
Action.....3	Foodstamps.....4,11,19	Rules granted.....4
Animal welfare.....3	Foreign trade.....12	Rural development.....6
Appropriations.....2	Forest Service.....12	Sugars, syrups, and molasses.....5
Bills passed.....9	Lands.....9	Taos Indians.....8
Bills reported.....1	Loans.....17	Taxation.....5
Coffee.....1	NAL.....16	Travel.....9
Consumers.....9	National Forest.....8	
Court leave.....9	National Park.....10	
	Peanuts.....1	

HIGHLIGHTS: House committees reported:

peanut marketing quota bill; and
bill extending International Coffee Agreement.

House committee:

reconsidered action on Animal Welfare Act and voted to re-report it; and
agreed to introduce clean bill on egg products inspection.

Rules were granted to:

food stamp amendment bill; and
plant variety protection bill.

Sen. Talmadge decried "alarming trend of agricultural prices".

HOUSE

1. BILLS REPORTED.

Committee on Agriculture reported H.R. 17582, to amend the peanut marketing quota provisions to make permanent certain provisions thereunder (H. Rept. 91-1640). p. H10991

Committee on Ways and Means reported with amendment H.R. 19567, to continue the International Coffee Agreement Act of 1968 until the close of September 30, 1973 (H. Rept. 91-1641). p. H10991

Committee on the Judiciary reported S. 1079, granting Congressional consent to the Susquehanna River Basin Compact (H. Rept. 91-1643). p. H10991

2. APPROPRIATIONS. Disagreed to the Senate amendments to H.R. 18515, the FY 71 Labor-HEW appropriation bill. Conferees appointed. p. H10915

3. AGRICULTURE COMMITTEE ACTION.

Reconsidered their previous action on H.R. 19846, the proposed Animal Welfare Act, and ordered it re-reported, with amendment; and

Considered H.R. 19757, the proposed Egg Products Inspection Act, and agreed to introduce a clean bill. p. D1210

4. RULES GRANTED.

An open rule was granted providing for the consideration of and 2 hours of debate, waiving points of order against lines 2 through 14, on page 14, and making in order H.R. 19889 as a substitute on H.R. 18582, amendments to the Food Stamp Act; and

An open rule was granted providing for the consideration of and 1 hour of debate, waiving points of order against clause 3 of Rule XIII and section 31 of S. 3070, plant variety protection bill. pp. D1210-1

5. TARIFFS. Committee on Ways and Means voted to report (but did not actually report) H.R. 7626, to revise the Tariff Schedules with respect to the tariff classification of certain sugars, sirups, and molasses. p. D1211

6. REPORTS.

Received a letter from the Secretaries of Agriculture and HUD transmitting a report on assistance furnished to nonmetropolitan planning districts by the two Departments, pursuant to section 901(c) of the Agricultural Act of 1970; to the Committee on Agriculture. p. H10991

Received a letter from the Acting Secretary of Agriculture, transmitting a report on efforts of USDA to provide information and technical assistance to small communities and less populated areas in regard to rural development during fiscal year 1970, pursuant to section 901(d) of the Agricultural Act of 1970; to the Committee on Agriculture. p. H10991

DIGEST of Congressional Proceedings

OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

OFFICE OF BUDGET AND FINANCE
(FOR INFORMATION ONLY;
NOT TO BE QUOTED OR CITED)

For actions of December 8, 1970
91st-2nd; No. 196

CONTENTS

ACP.....4	Federal-aid Highway Act..7	Peanut acreage
Agricultural	Federal pay.....9	allotments.....2
appropriations.....1	Hazardous substances.....7	Railway strike.....5
Animal welfare.....2,8	Housing, urban	Rivers.....10,11
Appropriations.....1	development.....3	Rivers, harbors,
Appropriations-DOT.....7	Novel plant varieties....6	flood control.....12

HIGHLIGHTS: Both Houses agreed to the conference report on agricultural appropriations, clearing the measure for the President.
Senate passed and cleared for the President bills affecting peanut acreage allotments, and animal welfare.
House passed with amendments the Plant Variety Protection Act.
Conferees in executive session agreed to file conference report on the proposed Federal Salary Comparability Act.
Sen. Cooper extolled the Agricultural Conservation Program.

SENATE

1. APPROPRIATIONS. Both Houses agreed to the conference report on H.R. 17923, FY 1971 appropriations for the Department of Agriculture. This bill now goes to the President. pp. S19664-81; H11300-6
Passed H.R. 19590, FY 1971 appropriations for the Defense Establishment, with amendments: conference requested and conferees appointed. pp. S19631-64 S19681-712
2. PEANUT ACREAGE ALLOTMENTS; ANIMAL WELFARE. Passed without amendment H.R. 17582, establishing permanent authority for the sale and transfer of peanut acreage allotments; and H.R. 19846, relating to the care of certain animals used for purposes of research, experimentation, exhibition, or held for sale as pets. Both bills now go to the President. pp. S19690; S19714-6
3. HOUSING, URBAN DEVELOPMENT. Passed H.R. 19436, after substituting the language of S. 4368 passed earlier, the proposed Housing and Urban Development Act of 1970, with further amendment. p. S19712
4. ACP. Sen. Cooper praised the Agricultural Conservation Program and called upon President to act to restore funds for the service. pp. S19630-1
5. RAILWAY STRIKE. Both Houses received the President's message concerning the railway strike emergency, (H. Doc. No. 91-424) pp. H11299-300; S19563

HOUSE

6. NOVEL PLANT VARIETIES. Passed with amendments S. 3070, to encourage the development of novel varieties of sexually reproduced plants. pp. H11330-9
7. APPROPRIATIONS-DOT; FEDERAL-AID HIGHWAY ACT; HAZARDOUS SUBSTANCES. Disagreed with Senate amendments, requested conference, and appointed conferees, on the following bills.
H.R. 19504, Federal-Aid Highway Act; and
H.R. 17755, FY 1971 Appropriations for the Department of Transportation. Insisted on its amendment and requested conference on S. 2162, to provide for special packaging to protect children from hazardous substances; conferees appointed. pp. H11300; H11306-24; H11330-9
8. ANIMAL WELFARE. Rep. Whitehurst spoke in favor of H.R. 19846, the Animal Welfare measure and inserted the report "Committee Intent". pp. H11340-1
9. FEDERAL PAY. Conferees, in executive session, agreed to file a conference report on H.R. 13000, proposed Federal Salary Comparability Act of 1970.

and shall continue not to exceed one hour, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Agriculture, the bill shall be read for amendment under the five-minute rule. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the bill and amendments thereto for final passage without intervening motion except one motion to recommit.

The SPEAKER pro tempore. The gentleman from Texas (Mr. YOUNG) is recognized for 1 hour.

Mr. YOUNG. Mr. Speaker, I yield 30 minutes to the gentleman from Ohio (Mr. LATTA) pending which I yield myself such time as I may consume.

Mr. Speaker, House Resolution 1290 provides an open rule with 1 hour of general debate for consideration of S. 3070, The Plant Variety Protection Act. All points of order are waived against the bill for failure to comply with the Ramseyer rule, clause 3, rule XIII, and against section 31 of the bill because of appropriations in a legislative bill.

The purpose of S. 3070 is to encourage the development of novel varieties of sexually reproduced plants and to make them available to the public, providing protection available to those who breed, develop, or discover them, and thereby promoting progress in agriculture in the public interest.

Certificates of plant variety protection would be issued to assure developers of novel varieties of sexually reproduced plants exclusive rights to sell reproduce, import, or export such varieties, or use them in the production of hybrids or different varieties, for a period of 17 years. A plant variety protection office would be established in the Department of Agriculture to administer the law.

Protection is presently limited, under patent law, to those varieties of plants which reproduce by such methods as grafting or budding. No protection is available to those varieties of plants which reproduce sexually—generally by seeds. Thus, patent protection is not available with respect to new varieties of agricultural crops such as cotton or soybeans.

The Secretary would establish reasonable fees to be collected to cover substantially all costs of administration; provide for their deposit in a revolving fund which would be available for administration of the act; and provide for a \$50 filing fee pending establishment of fees by the Secretary.

Mr. Speaker, I urge the adoption of the rule.

Mr. HALL. Mr. Speaker, will the gentleman yield?

Mr. YOUNG. I yield to the gentleman from Missouri.

Mr. HALL. Mr. Speaker, it is all well and good to say that the Committee on Rules decided in its wisdom to waive all points of order because of the Ramseyer rule, and because it is an appropriation on a legislative bill, but I wonder if the gentleman could develop for the Members who have their rights taken away by such a waiver as individually elected

Representatives of the House of the Congress, the reasoning and the background for why there should be such waivers.

Mr. YOUNG. Mr. Speaker, I would say to the gentleman from Missouri that the distinguished chairman of the Committee on Agriculture is here, but the request by the Committee on Agriculture was for a waiver for the simple reasons stated in the resolution, and in the statement that it does not comply with the Ramseyer rule.

If the gentleman wants to ask the gentleman why his committee did not comply, he may do so.

Mr. HALL. Mr. Speaker, if the gentleman will yield further—

Mr. YOUNG. I am glad to yield to the gentleman.

Mr. HALL. I understand and often agree to not repeating all of the Ramseyer requirements in every piece of legislation that comes to the floor of the House. I find no fault with that when the Committee on Rules states it forthrightly and we need to solve, plus expedite our business. But for a long time we have made book on whether it was the Committee on Rules, whether it was the asking committee, or, indeed, whether in some instances, the Parliamentarian; that we have waived other points of order, and thus obviating the rights of individuals. And to simply get up and say that under a certain section of the bill that you make in order by this rule, points of order must be waived because it is an appropriation on a bill that otherwise has to do with authorizing only by a legislative committee is certainly not adequate in my book to make me support this.

I would like to know why this right is taken away.

Mr. LATTA. Mr. Speaker, will the gentleman yield?

Mr. YOUNG. I yield to the gentleman.

Mr. LATTA. Mr. Speaker, if the gentleman from Missouri will take a look at page 9, line 23, he will find the other reason why the Committee on Rules took this action.

The language of the bill reads: "The Secretary shall, under such regulations as he may prescribe, charge and collect reasonable fees for services performed under this Act. The fees authorized by this section shall be established to substantially cover the costs of administration of this Act."

That is setting up this fund that they can reuse the funds year after year without appropriations—and that is the second reason that the Rules Committee took the action that they did.

Mr. HALL. Mr. Speaker, will the gentleman yield further?

Mr. YOUNG. I yield to the gentleman.

Mr. HALL. Yes, I understand that it establishes some income which we hope may or may not be self-supporting and gives the Secretary open-handed authority now and forevermore without reporting back through the appropriation process or any other of the common constitutional devices and prerogatives of the Congress, to go ahead with this.

If the Committee on Rules continues to waive points of order on such a basis, I do not know why we just do not become

a "rubber-stamp" body. I oppose such rules.

Mr. LATTA. Mr. Speaker, will the gentleman yield further?

Mr. YOUNG. I yield to the gentleman.

Mr. LATTA. Let me say that this is not unique under these circumstances, and I do not think we are establishing a precedent here.

Mr. HALL. No, because we have done the same thing with section 32 funds, and on almost any bill that comes through here we are willing to "waive points of order" instead of debating them and letting the committee work its will, whether it is in the Committee of the Whole House on the State of the Union or whether it is the whole House. Oftentimes we hear that under a tax bill and other means of obtaining revenue we do not dare to open up the tax bills or the Liberty Loan bond issue would be revised and amended.

I just wonder when we are going to stop and if members of the Committee on Rules cannot explain that more adequately. The rule should be voted down.

I thank the gentleman for yielding.

Mr. LATTA. Mr. Speaker, I yield myself such time as I may require.

(Mr. LATTA asked and was given permission to revise and extend his remarks.)

Mr. LATTA. Mr. Speaker, I think the main thrust of this legislation has been needed for several years for some protection setting up this department or within the Department of Agriculture a plant variety protection office. And this office is empowered to issue certificates of plant variety protection.

Mr. Speaker, as I pointed out earlier in the colloquy with the gentleman from Missouri, there is a new fund being created by this bill in which these fees will be deposited for use and reuse by the department without appropriation, or the Appropriations Committee.

As I mentioned, this is not unique. If the gentleman has a better system for doing this, I am certain at the time that this bill comes out, he can move to strike and insert his bit of wisdom.

Mr. GROSS. Mr. Speaker, will the gentleman yield?

Mr. LATTA. I am happy to yield to the gentleman from Iowa.

Mr. GROSS. Why is not the rule conformed to in this case?

Mr. LATTA. Let me say to the gentleman who is as great an advocate as I am when it comes to saving the taxpayers' money that we hear a lot about that these days, and it will cost a little bit more money to print this whole act in this bill and to reproduce it in the CONGRESSIONAL RECORD.

I observed the other day that there has been a tremendous jump in the cost of printing the CONGRESSIONAL RECORD, and that is because all printing costs have gone up. I am sure the gentleman wants to save the taxpayers' money. This is one of the instances in which we thought we could do so, and I am sure the gentleman will concur with me that we should waive the Ramseyer act in order to save the money.

Mr. GROSS. If the gentleman will yield, I do not know about that. We ought

to abolish the rule if we are not going to use the rule. The gentleman says that this is not unique. No, it is not unique because we scarcely get a rule that does not waive points of order in one way or another. It seems to me we are resorting to the comfortable way of life.

Mr. LATTA. It might not be too comfortable, but it does save some money to waive the Ramseyer rule. I think this is an appropriate case in which it could be waived, and the members of the Rules Committee believe it should be waived.

Mr. Speaker, I have no further requests for time.

Mr. YOUNG. Mr. Speaker, I have no further requests for time. I move the previous question on the resolution.

The previous question was ordered.

The SPEAKER pro tempore. The question is on agreeing to the resolution.

The question was taken, and the Speaker pro tempore announced that the "ayes" appeared to have it.

Mr. HALL. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Doorkeeper will close the doors, the Sergeant at Arms will notify absent Members, and the Clerk will call the roll.

The question was taken; and there were—yeas 331, nays 27, not voting 76, as follows:

[Roll No. 390]

YEAS—331

Abernethy	Caffery	Fascell
Adams	Camp	Felghan
Addabbo	Carey	Findley
Albert	Carney	Flsh
Alexander	Carter	Fisher
Anderson,	Casey	Flood
Calif.	Cederberg	Flowers
Anderson, Ill.	Chamberlain	Flynt
Andrews, Ala.	Chappell	Foley
Andrews,	Clancy	Ford, Gerald R.
N. Dak.	Clark	Forsythe
Annunzio	Clausen,	Fountain
Arends	Don H.	Fraser
Ashley	Clawson, Del	Frelinghuysen
Ayres	Cleveland	Friedel
Barrett	Cohelan	Friedel
Beall, Md.	Collins, Ill.	Fulton, Pa.
Belcher	Colmer	Fulton, Tenn.
Bell, Calif.	Conable	Fuqua
Bennett	Conte	Galifianakis
Berry	Conyers	Gallagher
Betts	Corbett	Garmatz
Bevill	Corman	Gettys
Blester	Coughlin	Glaimo
Blackburn	Cowger	Gibbons
Blanton	Crane	Gilbert
Blatnik	Culver	Goldwater
Boggs	Cunningham	Gonzalez
Boland	Daniel, Va.	Goodling
Bow	Daniels, N.J.	Green, Oreg.
Brademas	Davis, Ga.	Green, Pa.
Brasco	Davis, Wis.	Griffin
Bray	de la Garza	Griffiths
Brinkley	Delaney	Gubser
Brock	Dellenback	Gude
Brooks	Derwinski	Hagan
Broomfield	Devine	Haley
Brotzman	Donohue	Hamilton
Brown, Mich.	Dorn	Hammer-
Brown, Ohio	Downing	schmidt
Broyhill, N.C.	Dulski	Hanley
Broyhill, Va.	Duncan	Hansen, Wash.
Buchanan	Dwyer	Harrington
Burke, Fla.	Eckhardt	Harsha
Burke, Mass.	Edmondson	Hastings
Burleson, Tex.	Edwards, Ala.	Hathaway
Burlison, Mo.	Edwards, Calif.	Hays
Burton, Calif.	Ellberg	Helbert
Burton, Utah	Erlenborn	Helstoski
Bush	Esch	Henderson
Byrne, Pa.	Eshleman	Hicks
Byrnes, Wis.	Evans, Colo.	Hogan
Cabell	Farbsteln	Holifield

Horton	Montgomery	Scott
Howard	Moorhead	Sebellus
Hull	Morgan	Shibley
Hungate	Morse	Shriver
Hunt	Mosher	Sikes
Hutchinson	Natcher	Sisk
Ichord	Nedzi	Skubitz
Jarman	Nelsen	Smith, Calif.
Johnson, Calif.	Nichols	Smith, Iowa
Johnson, Pa.	Nix	Smith, N.Y.
Jones, Ala.	O'Hara	Springer
Jones, N.C.	Olsen	Stafford
Jones, Tenn.	O'Neal, Ga.	Staggers
Kazen	O'Neill, Mass.	Stanton
Keith	Passman	Steed
Kleppe	Pepper	Steele
Kuykendall	Perkins	Steiger, Ariz.
Kyl	Pettis	Steiger, Wis.
Kyros	Philbin	Stratton
Landgrebe	Pickle	Stubblefield
Landrum	Pike	Sullivan
Latta	Pirnie	Symington
Leggett	Poage	Taft
Lennon	Podell	Talcott
Lloyd	Pollock	Taylor
Long, Md.	Price, Ill.	Teague, Calif.
Lujan	Price, Tex.	Thompson, N.J.
Lukens	Pryor, Ark.	Thomson, Wis.
McCarthy	Pucinski	Tiernan
McClory	Quie	Tunney
McClure	Quillen	Udall
McDade	Railsback	Ullman
McDonald,	Randall	Van Deerlin
Mich.	Rarick	Vander Jagt
McFall	Rees	Vanik
McMillan	Reid, Ill.	Vigorito
Macdonald,	Reid, N.Y.	Wampler
Mass.	Reuss	Ware
MacGregor	Rhodes	Watson
Madden	Riegle	Watts
Mahon	Roberts	Whalen
Mailliard	Robison	Whalley
Mann	Roe	White
Marsh	Rogers, Colo.	Whitehurst
Martin	Rogers, Fla.	Whitten
Mathias	Rooney, N.Y.	Widnall
Matsunaga	Rooney, Pa.	Williams
May	Rostenkowski	Wilson, Bob
Mayne	Roth	Wilson,
Meeds	Roybal	Charles H.
Melcher	Ruppe	Wlenn
Michel	Ruth	Wolf
Mikva	St Germain	Wyatt
Miller, Calif.	Sandman	Wylie
Miller, Ohio	Satterfield	Wyman
Mills	Schadeberg	Yatron
Minish	Scherle	Young
Mizell	Scheuer	Zablocki
Mollohan	Schneebeli	Zwach
Monagan	Schwengel	

NAYS—27

Ashbrook	Jacobs	Patten
Bingham	Jonas	Pelly
Brown, Calif.	Kastenmeier	Rosenthal
Dickinson	Koch	Rousset
Gross	Lowenstein	Ryan
Hall	Mink	Schmitz
Hawkins	Mize	Snyder
Hechler, W. Va.	Obey	Thompson, Ga.
Hosmer	Patman	Yates

NOT VOTING—76

Abbltt	Foreman	Ottinger
Adair	Gaydos	Poff
Anderson,	Gray	Powell
Tenn.	Grover	Preyer, N.C.
Aspinall	Halpern	Purcell
Baring	Hanna	Reifel
Biaggi	Hansen, Idaho	Rivers
Bolling	Harvey	Rodino
Button	Heckler, Mass.	Roudebush
Celler	Karth	Saylor
Chisholm	Kee	Slack
Clay	King	Stephens
Collier	Kluczynski	Stokes
Collins, Tex.	Langen	Stuckey
Cramer	Long, La.	Teague, Tex.
Daddario	McCloskey	Waggonner
Denney	McCulloch	Waldie
Dennis	McEwen	Weicker
Dent	McKneally	Wiggins
Diggs	Meskill	Wold
Dingell	Minshall	Wright
Dowdy	Morton	Wydler
Edwards, La.	Moss	Zion
Evins, Tenn.	Murphy, Ill.	
Fallon	Murphy, N.Y.	
Ford,	Myers	
William D.	O'Konski	

So the resolution was agreed to.

The Clerk announced the following pairs:

Mr. Waggonner with Mr. Adair.
Mr. Dent with Mr. Saylor.
Mr. Gettys with Mr. Collier.
Mr. Moss with Mr. Wiggins.
Mr. Gray with Mr. Myers.
Mr. Kee with Mr. Button.
Mr. Waldie with Mr. Weicker.
Mr. Karth with Mr. Minshall.
Mr. Preyer of North Carolina with Mr. O'Konski.
Mr. Daddario with Mr. Meskill.
Mr. Abbltt with Mr. Dennis.
Mr. Purcell with Mr. McEwen.
Mr. Baring with Mr. Collins.
Mr. Long of Louisiana with Mr. McCulloch.
Mr. Stephens with Mr. Poff.
Mr. Aspinall with Mr. Harvey.
Mr. Celler with Mr. Grover.
Mr. Hanna with Mr. Clay.
Mr. Edwards of Louisiana with Mr. Cramer.
Mr. Evins of Tennessee with Mr. McCloskey.
Mr. Slack with Mr. Langen.
Mr. Stokes with Mr. Fallon.
Mr. Rivers with Mr. King.
Mr. Rodino with Mr. Hastings.
Mr. Murphy of New York with Mr. Wyder.
Mr. Teague of Texas with Mr. Morton.
Mr. Wright with Mr. Reifel.
Mr. Dowdy with Mr. Denney.
Mr. Anderson of Tennessee with Mr. Zion.
Mr. Kluczynski with Mr. Roudebush.
Mr. Dingell with Mrs. Chisholm.
Mr. Stuckey with Mr. Foreman.
Mr. Murphy of Illinois with Mr. Hansen of Idaho.
Mr. William D. Ford with Mr. Powell.
Mr. Ottinger with Mr. Diggs.
Mr. Blagel with Mr. McKneally.
Mr. Halpern with Mr. Wold.

Mr. PELLY changed his vote from "yea" to "nay."

The result of the vote was announced as above recorded.

The doors were opened.

A motion to reconsider was laid on the table.

RESIGNATION FROM COMMITTEE ON SCIENCE AND ASTRONAUTICS

The SPEAKER laid before the House the following resignation from a committee:

WASHINGTON, D.C.,
December 8, 1970.

Hon. JOHN W. MCCORMACK,
Speaker, U.S. House of Representatives,
Washington, D.C.

DEAR MR. SPEAKER: I am tendering my resignation as a member of the House Committee on Science and Astronautics.

I am apprising Chairman Miller of this action so that you and he may make the appropriate arrangements.

I wish to take this opportunity to wish you the very best in retirement. I have greatly appreciated your kindness and consideration to me since I came to Congress.

Warmest regards,
Sincerely,

BERTRAM L. POELL.

The SPEAKER. Without objection, the resignation will be accepted.

There was no objection.

PLANT VARIETY PROTECTION ACT

Mr. POAGE. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (S. 3070) to encourage the development of novel varieties of sexually reproduced plants and to make them available to the public, providing protection available to those who breed, develop, or dis-

cover them, and thereby promoting progress in agriculture in the public interest.

The SPEAKER. The question is on the motion offered by the gentleman from Texas.

The motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill S. 3070, with Mr. CAREY in the chair.

The Clerk read the title of the bill.

By unanimous consent, the first reading of the bill was dispensed with.

The CHAIRMAN. Under the rule, the gentleman from Texas (Mr. POAGE) will be recognized for 1 hour and the gentleman from North Dakota (Mr. KLEPPE) will be recognized for 1 hour. The Chair recognizes the gentleman from Texas.

Mr. POAGE. Mr. Chairman, I yield myself 5 minutes.

Mr. Chairman, this is a bill which has been considered for a long time and it has become of special importance this year because of the tremendous blight we have seen affecting our corn crop. We know that the evil effects of that blight can to a large degree be alleviated by plant breeding. We know that is costly. We know it is particularly costly if you have to do it in a hurry, and we know that it is important to get seed that will resist that blight promptly.

It is the belief of those who support this legislation that by giving protection to those who develop varieties which in this case would be resistant, more productive, or more desirable varieties, giving protection to the producer of such a variety that he might sell that variety to the public for a period of time without someone else taking the benefit of his work and his expenditures, is in the public interest. I am convinced that it is in the public interest; our committee is convinced it would be beneficial to the whole country to give this kind of protection. I recognize that there are those who feel that the whole idea of a patent and a copyright program is unsound, and we ought never give anybody any protection for the development of their ideas.

But practically all of the nations of the world have taken a contrary view and have felt it to be in the public interest to develop desirable machinery and methods and statutes to give that kind of protection. That is what this bill does. It gives that kind of protection to those persons who produce plants from seed. We have laws at the present time authorizing a tax on asexually developed plants; that is, those produced by grafting or budding or the use of the tissue of the plant. But for plants produced from seed, there has been no such protection.

This will place the protection machinery in the Department of Agriculture under a form similar to patent papers, but which will be handled by the Department of Agriculture, because it involves plant seeds over which the Department of Agriculture has a special interest.

Mr. FINDLEY. Mr. Chairman, will the gentleman yield?

Mr. POAGE. I yield to the gentleman from Illinois.

Mr. FINDLEY. Mr. Chairman, I thank the gentleman for yielding, and I compliment him for bringing this bill to the floor.

Mr. Chairman, it is my understanding seed companies are definitely in favor of this, and I have heard very little criticism on it. The only criticism I have heard is that it will impose higher costs on the farmer. Does the chairman of the committee have anything to comment on that?

Mr. POAGE. I do not think there is any doubt that it will mean if somebody produces a seed that gives better results than anybody else's seed, and if he is the only one who can sell that seed, then he will get more for it. That is the only reason he will develop the seed.

Our patent laws all enable the man who patents the invention to get more for it. I think there is no question about that. But this will not increase the cost of anything the farmer now has. The farmer will have everything he has today without any increase in cost.

This enables the farmer and us to get some research done in a hurry. At least, we hope for that. We hope to get special research done in a hurry, because it will give the costs back to those who spend their time and money in developing new plant species.

This is the only way we know to get people to invest their time and money. It is expensive to develop such seeds. So in the long run we believe there will be beneficial results for the producers and farmers. That is the reason the Agriculture Committee is basically interested in this. That is what basically this bill does.

It seems to me since we have just taken a vote on the rule, and the vote has been overwhelming, it would be a mistake to take the rest of the afternoon on this and to interfere with the ceremonies which are anticipated a little later on this evening, so I reserve the balance of my time.

(Mr. KLEPPE asked and was given permission to revise and extend his remarks.)

Mr. KLEPPE. Mr. Chairman, I think the chairman of our committee has explained this bill very well. I rise in support of it.

Mr. Chairman, I would add that we held rather extensive hearings on this legislation. Any controversies that originated have been very well taken care of in this legislation.

I would add one further comment on the question of the gentleman from Illinois (Mr. FINDLEY). It was never the intent of this legislation in any way, shape, or form, to stifle competition which would result from a farmer developing a particular breed of plant. This was not the intent of the legislation, and I do not think want to do that. The protection we are talking about is very definitely along the lines of or similar to what we have under the patent law. This is a good piece of legislation.

Mr. Chairman, I rise in support of the bill, S. 3070, a measure which will encourage the development of novel varieties of sexually reproduced plants, make them available to the public, provide

protection for breeders and promote progress in agriculture.

When this measure becomes law a plant variety protection office will be established within the Department of Agriculture. Its function will be to issue certificates of plant variety protection to developers of new varieties. Among the benefits which will enure to agricultural America and the consuming public are:

First. It will greatly stimulate private plant breeding;

Second. It will allow our Government agricultural experiment stations to increase their efforts on needed basic research;

Third. It would permit public expenditures for applied plant breeding to be deviated to important areas which industry may not pursue;

Fourth. It will give farmers and gardeners more choice, and varieties which are better in yield or in quality, and so forth;

Fifth. It will make American agricultural products more competitive in world markets; and

Sixth. Consumers and other purchasers of crops will benefit: in some instances by improved quality, in others by aiding the production needed to serve them.

As a member of the subcommittee which conducted hearings on this measure I am convinced that the new law will definitely stimulate plant breeding. Experience in England provides a good case history. Prior to the enactment of its Plant Varieties and Seeds Act of 1964, little plant breeding was done in England by private companies, and not much was done by government agencies. Since the new law came into effect, there has been a great upsurge of plant breeding, and a once moribund seed industry is now showing signs of great new vitality.

The availability of legal protection for plant varieties will allow our Government experiment stations to concentrate more of their efforts on greatly needed basic research. Plant breeding is becoming an ever more sophisticated science. If the United States is to continue to keep pace with developments elsewhere, our scientific institutions must constantly search out the new genetic techniques and properties which can be incorporated into the overall American plant breeding effort. Private seedsmen cannot afford to do this kind of research. The public institutions are well equipped for such investigations.

The availability of protection for plant breeders should increase the benefits from public expenditures where they continue to be used for applied plant breeding. Many public institutions today spend sizable sums of money on the development of finished plant varieties. Once released, these experiment station varieties are made available to all. Advertising and marketing such varieties is often not attractive. Within a short time, many of those which are marketed disappear from the market because those who handle them learn they cannot make the kind of return on their investment needed to allow them to continually handle such varieties.

Finally, and most importantly, legal protection for plant varieties should make U.S. agricultural products more competitive in world markets. Higher crop yields help reduce per unit costs of the finished product, be it meat, milk, food, or fiber. Clear examples of this may be seen by noting the dramatic increase in yields of just two crops—corn and sorghum—which, as a result of their adaptation to hybridization, have been the object of keen competition among private plant breeders of this country.

For all of the above reasons I urge my colleagues to support S. 3070, a measure which will benefit all America.

Mr. Chairman, I reserve the balance of my time.

Mr. MAYNE. Mr. Chairman, will the gentleman yield?

Mr. KLEPPE. I yield to the gentleman from Iowa.

(Mr. MAYNE asked and was given permission to revise and extend his remarks.)

Mr. MAYNE. Mr. Chairman, I thank the gentleman from North Dakota for yielding.

Mr. Chairman, I speak in support of this bill, which is very much needed and salutary legislation.

Mr. Chairman, the bill under consideration, S. 3070, would extend the same legal protection to plant scientists as has been enjoyed by research workers in other fields for decades through our patent laws.

Those plants which reproduce asexually such as by budding and grafting have been covered by patent law since 1930. There is no justification for not extending the same coverage to sexually reproduced plants.

Plant breeding is becoming an ever more sophisticated science. This legislation is a must if the United States is to keep pace with the rest of the world in the area of botanical research and development. The protection available through this legislation will definitely stimulate plant research.

This bill has already passed the Senate without serious opposition. I urge my colleagues to join me in support of this proposal.

Mr. KASTENMEIER. Mr. Chairman, will the gentleman yield?

Mr. KLEPPE. I yield to the gentleman from Wisconsin.

Mr. KASTENMEIER. Mr. Chairman, I represent an agricultural district too, and I am concerned about the cost of this to the farmer, and ultimately, of course, to the consumer. It seems strange that we have gone all the way through our history up to 1970 without the need to resort to this sort of protection for some special interests.

As a matter of fact, plants have been developed over the years, have they not—the winter wheats and things we grow in the Dakotas—and without such recourse to protective laws, but rather through development, and much of it public development through the State universities and the Department of Agriculture? This will result, will it not, in a sort of hiding of development, as is often the case in the patent development protection?

Mr. KLEPPE. I will say to the gentleman, we believe it would not. The gentleman probably knows that asexually produced plants already have the type of protection that this legislation provides for sexually produced plants.

Mr. POAGE. Mr. Chairman, will the gentleman yield?

Mr. KLEPPE. I am glad to yield to the gentleman from Texas.

Mr. POAGE. The answer is quite clear. There is no way in the world for a seed producer to profit by his development if he hides it, because what he has to do is to make the development public and sell it on as wide a basis as he can. That is the only way in the world this bill can help him.

I believe, rather than encouraging anybody to hide his development or discovery, on the other hand it very definitely encourages the use of that development as widely as possible.

Mr. KASTENMEIER. On that point I refer to the hiding of the development of the process. An invention in process is often concealed by the inventor. Presently in our public institutions and otherwise information with respect to the development of plants is commonly shared, and there is none of the concealment or hiding which would be implicit in an economic motive under this sort of legislation.

Mr. POAGE. Mr. Chairman, will the gentleman further?

Mr. KLEPPE. I yield further.

Mr. POAGE. Again it seems clear to me that under the present system, of course, our public agencies all interchange information. They would do exactly the same thing under the terms of this bill, because none of the public research agencies, the experiment stations, would have any reason for doing other than what they are doing now. They would not be restricting the use of their seeds.

With respect to the big seed houses today, nobody knows what the big seed houses are doing because they have to hide everything. It is the only assurance in the world they have that somebody else will not reap all the rewards of their investment. We are trying to get this out from under the barrel and put it out in the light where the public can see what they are doing, where they will have some protection as to what they are doing.

Mr. KLEPPE. If I may make one comment, there is nothing in this bill, as I understand it, that would not be productive from the standpoint of public institutions or individuals.

What we are talking about basically, and what the gentleman is referring to, involves money and involves cost to the consumers. The whole intent of this is to protect the spirit of competition so that we can develop better products and better plants so that the consumer will have a better product of whatever it is to be produced. Whether it comes from a public institution or an individual, I do not see that this legislation would not offer the very best kind of protection necessary to insure that development.

Mr. KASTENMEIER. Mr. Chairman, will the gentleman yield further?

Mr. KLEPPE. I am glad to yield further.

Mr. KASTENMEIER. I would only say, in commenting, I can imagine that the seed houses would like this protection. The consumer in the ultimate—and the farmer in the first instance, the user of seeds—is going to be penalized. For that reason, Mr. Speaker, I am going to oppose the bill.

Mr. KLEPPE. May I ask the gentleman from Wisconsin, when he indicates that the farmer would be penalized, specifically how he figures that?

Mr. KASTENMEIER. The gentleman knows that the patent system is a costly system not only bureaucratically here in the Department of Agriculture but also in terms of obtaining a patent today.

This involves the whole invention process. I trust it will not cost as much in the Department of Agriculture as it does in the Patent Office. I should know about that, because I am chairman of the Patent Subcommittee of the Committee on the Judiciary. It is a very expensive process, I assure the gentleman.

I think as a result of it it has caused an increase in cost. We think in terms of invention that it has served the purpose in our Nation's history to reward the inventor. However, I think in the field of agriculture, where we have gone so many years, all of the years of our Republic up to the present time, without this particular protection, it would be very costly now to invoke it.

I urge the Members to consider the implications of an act such as we are considering today.

Mr. KLEPPE. I respect the gentleman's position, but I think on the other side of the coin where we would be if we did not allow some protection to these individuals that would make a substantial investment to improve our plant varieties and thereby ultimately to benefit the consumer. I think this is the real plus of this situation.

Mr. HUNGATE. Mr. Chairman, will the gentleman yield?

Mr. KLEPPE. I yield to the gentleman from Missouri.

(Mr. HUNGATE asked and was given permission to revise and extend his remarks.)

Mr. HUNGATE. Mr. Chairman, I commend the committee on the work they have done in this field. I have had constituents who have been interested in this matter over a period of 5 or 6 years. I know this is a difficult problem. I believe it will be constructive and helpful, though. I agree with the gentleman from Wisconsin that there are many things we have not had in our Republic up to now. Among them are Federal aid to education, SST's, ABM's, minimum wages, and open housing. I think we need to look at the farmer's situation and try to give him a fair shake along with the rest of the population.

I thank the gentleman for yielding and again commend him on the fine work he has done.

Mr. KLEPPE. I thank the gentleman for his comment.

Mr. Chairman, I reserve the balance of my time.

Mr. POAGE. Mr. Chairman, I have no further requests for time.

Mr. KLEPPE. I have no further requests for time.

The CHAIRMAN. Under the rule, the Clerk will read.

The Clerk read as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

INDEX

	Section
TITLE I—Plant Variety Protection Office	1
TITLE II—Protectability of Plant Varieties and Certificates of Protection	41
TITLE III—Plant Variety Protection and Rights	101
TITLE I—PLANT VARIETY PROTECTION OFFICE	
Chapter	Section
1. Organization and Publications.....	1
2. Legal Provisions as to the Plant Variety Protection Office.....	21
3. Plant Variety Protection Fees.....	31
Chapter 1.—ORGANIZATION AND PUBLICATIONS	

Section 1. Establishment.

There is hereby established in the Department of Agriculture a bureau to be known as the Plant Variety Protection Office, which shall have the functions set forth in this Act.

Sec. 2. Seal.

The Plant Variety Protection Office shall have a seal with which documents and certificates evidencing plant variety protection shall be authenticated.

Sec. 3. Organization.

The organization of the Plant Variety Protection Office shall, except as provided herein, be determined by the Secretary of Agriculture (hereinafter called the Secretary). The office shall devote itself substantially exclusively to the administration of this Act.

Sec. 4. Restrictions on Employees as to Interest in Plant Variety Protection.

Employees of the Plant Variety Protection Office shall be ineligible during the periods of their employment, to apply for plant variety protection and to acquire directly or indirectly, except by inheritance or bequest, any right or interest in any matters before that office. This section shall not apply to members of the Plant Variety Protection Board who are not otherwise employees of the Plant Variety Protection Office.

Sec. 5. Bond of Employees.

Such employees as the Secretary designates, before entering upon their duties, shall severally give bond, with sureties, in sums prescribed by the Secretary, conditioned for the faithful discharge of their respective duties and that they shall render to the proper officers of the Treasury a true account of all money received by virtue of their offices.

Sec. 6. Regulations.

The Secretary may establish regulations, not inconsistent with law, for the conduct of proceedings in the Plant Variety Protection Office after consultations with the Plant Variety Production Board.

Sec. 7. Plant Variety Protection Board.

(a) APPOINTMENT.—The Secretary shall appoint a Plant Variety Protection Board. The Board shall consist of individuals who are

experts in various areas of varietal development covered by this Act. Membership of the Board shall include farmer representation and shall be drawn approximately equally from the private or seed industry sector and from the sector of government or the public. The Secretary or his designee shall act as chairman of the Board without voting rights except in the case of ties.

(b) FUNCTIONS OF BOARD.—The functions of the Plant Variety Protection Board shall include:

(1) Advising the Secretary concerning the adoption of Rules and Regulations to facilitate the proper administration of this Act;

(2) Making advisory decisions on all appeals from the examiner. The Board shall determine whether to act as a full Board or by panels it selects; and whether to review advisory decisions made by a panel. For service on such appeals, the Board may select as temporary members, experts in the area to which the particular appeal relates; and

(3) Advising the Secretary on all questions under section 44.

(c) COMPENSATION OF BOARD.—The members of the Plant Variety Protection Board shall serve without compensation except for standard government reimbursable expenses. Sec. 8. Library.

The Secretary shall maintain a library of scientific and other works and periodicals, both foreign and domestic, in the Plant Variety Protection Office to aid the officers in the discharge of their duties.

Sec. 9. Register of Protected Plant Varieties.

The Secretary shall maintain a register of published specifications of United States protected plant varieties and a file of such other scientific and technical information as may be necessary or practicable.

Sec. 10. Publications.

(a) The Secretary may publish, or cause to be published, in such format as he shall determine to be suitable, the following:

(1) The specifications for plant variety protection including drawings and photographs.

(2) The Official Journal of the Plant Variety Protection Office, including annual indices.

(3) Pamphlet copies of the plant variety protection laws and rules of practice and circulars or other publications relating to the business of the Office.

(b) The Plant Variety Protection Office may print the heading of the drawings or photographs for protected plant varieties for the purpose of photolithography and may provide suitable copy for any lithography to appear on the same page.

(c) The Secretary may (1) establish public facilities for the searching of plant variety protection records and materials, and (2) from time to time, as through an information service, disseminate to the public those portions of the technological and other public information available to or within the Plant Variety Protection Office to encourage innovation and promote the progress of the useful arts.

(d) The Secretary may exchange any of the publications specified for publications desirable for the use of the Plant Variety Protection Office. The Secretary may exchange copies of specifications, drawings, and photographs of United States protected plant varieties for copies of specifications, drawings, and photographs of applications and protected plant varieties of foreign countries.

Sec. 11. Copies for Public Libraries.

The Secretary may supply printed copies of specifications, drawings, and photographs of protected plant varieties to public libraries in the United States which shall maintain such copies for the use of the public.

Chapter 2.—LEGAL PROVISIONS AS TO THE PLANT VARIETY PROTECTION OFFICE

Sec. 21. Day for Taking Action Falling on Saturday, Sunday, or Holiday.

When the day, or the last day, for taking any action or paying any fee in the United States Plant Variety Protection Office falls on Saturday, Sunday, a holiday within the District of Columbia, or on any other day the Plant Variety Protection Office is closed for the receipt of papers, the action may be taken or the fee paid, on the next succeeding business day.

Sec. 22. Form of Papers Filed.

The Secretary may by regulations prescribe the form of papers to be filed in the Plant Variety Protection Office.

Sec. 23. Testimony in Plant Variety Protection Office Cases.

The Secretary may establish regulations for taking affidavits, depositions, and other evidence required in cases before the Plant Variety Protection Office. Any officer authorized by law to take depositions to be used in the courts of the United States, or of the State where he resides, may take such affidavits and depositions, and swear the witnesses. If any person acts as a hearing officer by authority of the Secretary, he shall have like power.

Sec. 24. Subpenas, Witnesses.

(a) The clerk of any United States court for the district wherein testimony is to be taken in accordance with regulations established by the Secretary for use in any contested case in the Plant Variety Protection Office shall, upon the application of any party thereof, issue a subpoena for any witness residing or being within such district or within one hundred miles of the stated place in such district, commanding him to appear and testify before an officer in such district authorized to take depositions and affidavits, at the time and place stated in the subpoena. The provisions of the Federal Rules of Civil Procedure relating to the attendance of witnesses and the production of documents and things shall apply to contested cases in the Plant Variety Protection Office insofar as consistent with such regulations.

(b) Every witness subpoenaed or testifying shall be allowed the fees and traveling expenses allowed to witnesses attending the United States district courts.

(c) A judge of a court whose clerk issued a subpoena may enforce obedience to the process or punish disobedience as in other like cases, on proof that a witness, served with such subpoena, neglected or refused to appear or to testify. No witness shall be deemed guilty of contempt for disobeying such subpoena unless his fees and traveling expenses in going to, and returning from, one day's attendance at the place of examination, are paid or tendered him at the time of the service of the subpoena; nor for refusing to disclose any secret matter except upon appropriate order of the court which issued the subpoena or of the Secretary.

Sec. 25. Effect of Defective Execution.

Any document to be filed in the Plant Variety Protection Office and which is required by any law or regulation to be executed in a specified manner may be provisionally accepted by the Secretary despite a defective execution, provided a properly executed document is submitted within such time as may be prescribed.

Sec. 26. Regulations for Practice Before the Office.

The Secretary shall prescribe regulations governing the admission to practice and conduct of persons representing applicants or other parties before the Plant Variety Protection Office. The Secretary may, after

notice and opportunity for a hearing, suspend or exclude, either generally or in any particular case, from further practice before the Office of Plant Variety Protection any person shown to be incompetent or disreputable or guilty of gross misconduct.

Sec. 27. Unauthorized Practice.

Anyone who in the United States engages in direct or indirect practice before the Office of Plant Variety Protection while suspended or excluded under section 26, or without being admitted to practice before the Office, shall be liable in a civil action for the return of all money received, and for compensation for damage done by such person and also may be enjoined from such practice. However, there shall be no liability for damage if such person establishes that the work was done competently and without negligence. This section does not apply to anyone who, without a claim of self-sufficiency, works under the supervision of another who stands admitted and is the responsible party; nor to anyone who established that he acted only on behalf of any employer by whom he was regularly employed.

Chapter 3.—PLANT VARIETY PROTECTION FEES

Sec. 31. Plant Variety Protection Fees; Appropriations.

The Secretary shall, under such regulations as he may prescribe, charge and collect reasonable fees for services performed under this Act. The fees authorized by this section shall be established to substantially cover the costs of administration of this Act. Such fees shall be deposited into a fund to be available, without fiscal year limitation, for the administration of this Act. The initial capital of the fund shall consist of appropriations, which are hereby authorized to be made. Until such time as the Secretary prescribes fees as provided by this section, a fee of \$50 shall be charged for filing each application, subject to such adjustment as may be appropriate after fees are prescribed by the Secretary hereunder.

Sec. 32. Payment of Plant Variety Protection Fees; Return of Excess Amounts.

All fees shall be paid to the Secretary, and the Secretary may refund any sum paid by mistake or in excess of the fee required.

TITLE II—PROTECTABILITY OF PLANT VARIETIES AND CERTIFICATES OF PROTECTION

Chapter	Section
4. Protection of Plant Varieties.....	41
5. Applications: Form, Who May File, Relating Back, Confidentiality.....	51
6. Examination: Response Time, Initial Appeals	61
7. Appeals to Courts and Other Review.....	71
8. Certificates of Plant Variety Protection	81
9. Reexamination After Issue, and Contested Proceedings.....	91

Chapter 4.—PROTECTABILITY OF PLANT VARIETIES

Sec. 41. Definitions and Rules of Construction.

The definitions and rules of construction set forth in this section apply for the purposes of this Act.

(a) The term "novel variety" may be represented by, without limitation, seed, transplants, and plants, and is satisfied if there is:

(1) Distinctness in the sense that the variety clearly differs by one or more identifiable morphological, physiological or other characteristics (which may include those evidenced by processing or product characteristics, for example, milling and baking characteristics in the case of wheat) as to which a difference in genealogy may contribute evidence, from all prior varieties of public knowledge at the date of determination within the provisions of section 42; and

(2) Uniformity in the sense that any variations are describable, predictable and commercially acceptable; and

(3) Stability in the sense that the variety, when sexually reproduced or reconstituted, will remain unchanged with regard to its essential and distinctive characteristics with a reasonable degree of reliability commensurate with that of varieties of the same category in which the same breeding method is employed.

(b) The terms "United States" and "this country" means the United States of America, its territories and possessions, and the Commonwealth of Puerto Rico.

(c) The term "kind" means one or more related species or subspecies singly or collectively known by one common name, for example, soybean, flax, or radish.

(d) The term "date of determination" means the date when there has been at least tentative determination that the variety has been sexually reproduced with recognized characteristics, whether or not the novelty of those characteristics has been determined.

(e) The term "breeder" shall mean the person who—

(1) directs the final breeding creating the novel variety, or

(2) discovers the novel variety, and makes the tentative determination described in subsection (d). Where such actions are conducted by an agent on behalf of his principal, rather than the agent, shall be considered the breeder. The terms "breed", "develop", "originate", and "discover", and derivatives thereof shall each include the other.

(f) The term "sexually reproduced" shall include any production of a variety by seed.

(g) The term "basic seed" means the seed planted to produce certified or commercial seed.

(h) The term "testing" means testing or experimental use of a variety before any sale thereof. Sale for other than seed purposes of seed or other plant material produced as the result of testing shall not constitute a sale for the purpose of the preceding sentence or for the purpose of the following subsection.

(i) The term "public variety" means a variety sold or used in this country, or existing in and publicly known in this country; but use for the purpose of testing, or sale or use as individual plants not known to be sexually reproducible, shall not make the variety a public variety.

(j) A variety described in a publication as specified in section 42(a) (1) (B) is "effectively available to workers in this country" if a source from which it can be purchased is indicated in such publication or readily determinable or if such publication teaches how to produce the variety from source-material effectively available to workers in this country.

Sec. 42. Right to Plant Variety Protection; Plant Varieties Protectable.

(a) The breeder of any novel variety of sexually reproduced plant (other than fungi, bacteria, or first generation hybrids) who has so reproduced the variety, or his successor in interest, shall be entitled to plant variety protection therefor, subject to the conditions and requirements of this title unless one of the following bars exist:

(1) Before the date of determination thereof by the breeder, or more than one year before the effective filing date of the application therefor, the variety was (A) a public variety in this country, or (B) effectively available to workers in this country and adequately described by a publication reasonably deemed a part of the public technical knowledge in this country which description must include a disclosure of the principal characteristics by which the variety is distinguished.

(2) An application for protection of the variety based on the same breeder's acts, was filed in a foreign country by the owner or his privies more than one year before

the effective filing date of the application filed in the United States.

(3) Another is entitled to an earlier date of determination for the same variety and such other (A) has a certificate of plant variety protection hereunder or (B) has been engaged in a continuing program of development and testing to commercialization, or (C) has within six months after such earlier date of determination adequately described the variety by a publication reasonably deemed a part of the public technical knowledge in this country which description must include a disclosure of the principal characteristics by which the variety is distinguished.

(b) The Secretary may, by regulation, extend for a reasonable period of time the one year time period provided in subsection (a) for filing applications, and may in that event provide for at least commensurate reduction of the term of protection.

Sec. 43. Reciprocity Limits.

Protection under the Act may, by regulation, be limited to nationals of the United States, except where this limitation would violate a treaty and except that nationals of a foreign state in which they are domiciled shall be entitled to so much of the protection here afforded as is afforded by said foreign state to nationals of the United States for the same genus and species.

Sec. 44. Public Interest In Wide Usage.

The Secretary may declare a protected variety open to use on a basis of equitable remuneration to the owner, not less than a reasonable royalty, when he determines that such declaration is necessary in order to insure an adequate supply of fiber, food, or feed in this country and that the owner is unwilling or unable to supply the public needs for the variety at a price which may reasonably be deemed fair. Such declaration may be, with or without limitation, with or without designation of what the remuneration is to be; and shall be subject to review as under section 71 or 72 (any finding that the price is not reasonable being reviewable), and shall remain in effect not more than two years. In the event litigation is required to collect such remuneration, a higher rate may be allowed by the court.

Chapter 5.—APPLICATIONS: FORM, WHO MAY FILE, RELATING BACK, CONFIDENTIALITY

Sec. 51. Application for Recognition of Plant Variety Rights.

(a) An application for a certificate of Plant Variety Protection may be filed by the owner of the variety sought to be protected. The application shall be made in writing to the Secretary, shall be signed by or on behalf of the applicant, and shall be accompanied by the prescribed fee.

(b) An error as to the naming of the breeder, without deceptive intent, may be corrected at any time, in accordance with regulations established by the Secretary.

Sec. 52. Content of Application.

An application for a certificate recognizing plant variety rights shall contain:

(1) The name of the variety except that a temporary designation will suffice until the certificate is to be issued.

(2) A description of the variety setting forth its novelty and a description of the genealogy and breeding procedure, when known. The Secretary may require amplification, including the submission of adequate photographs or drawings or plant specimens, if the description is not adequate or as complete as is reasonably possible, and submission of records or proof of ownership or of allegation made in the application. An applicant may add to or correct the description at any time, before the certificate is issued, upon a showing acceptable to the Secretary that the revised description is retroactively accurate. Courts shall protect oth-

ers from any injustice which would result. The Secretary may accept records of the breeder and of any official seed certifying agency in this country as evidence of stability where applicable.

(3) A declaration that a viable sample of basic seed necessary for propagation of the variety will be deposited and replenished periodically in a public repository in accordance with regulations to be established hereunder. This declaration may be added by amendment.

(4) A statement of the basis of applicant's ownership.

Sec. 53. Joint Breeders.

(a) When two or more persons are the breeders, one (or his successor) may apply, naming the others.

(b) The Secretary, after such notice as he may prescribe, may issue a certificate of plant variety protection to the applicant and such of the other breeders (or their successors in interest) as may have subsequently joined in the application.

Sec. 54. Death or Incapacity of Breeder.

Legal representatives of deceased breeders and of those under legal incapacity may make application for plant variety protection upon compliance with the requirements and on the same terms and conditions applicable to the breeder or his successor in interest.

Sec. 55. Benefit of Earlier Filing Date.

(a) An application for a certificate of plant variety protection filed in this country based on the same variety, and on rights derived from the same breeder, on which there has previously been filed an application for plant variety protection in a foreign country which affords similar privileges in the case of applications filed in the United States by nationals of the United States, shall have the same effect as the same application would have if filed in the United States on the date on which the application for plant variety protection for the same variety was first filed in such foreign country, if the application in this country is filed within twelve months from the earliest date on which such foreign application was filed. No application shall be entitled to a right of priority under this section, unless the applicant designates the foreign application in his application or by amendment thereto and, if required by the Secretary, furnishes such copy, translation or both, as the Secretary may specify.

(b) An application for a certificate of plant variety protection for the same variety as was the subject of an application previously filed in the United States by or on behalf of the same person, or by his predecessor in title, shall have the same effect as to such variety as though filed on the date of the prior application if filed before the issuance of the certificate or other termination of proceedings on the first application or on an application similarly entitled to the benefit of the filing date of the first application and if it contains or is amended to contain a specific reference to the earlier filed application.

(c) A later application shall not by itself establish that a characteristic newly described was in the variety at the time of the earlier application.

Sec. 56. Confidential Status of Application.

Applications for plant variety protection and their contents shall be kept in confidence by the Plant Variety Protection Office, by the Board, and by the offices in the Department of Agriculture to which access may be given under regulations. No information concerning the same shall be given without the authority of the owner, unless necessary under special circumstances as may be determined by the Secretary, except that the Secretary may publish the variety names designated in applications, stating the kind to which each applies.

Sec. 57. Publication.

The Secretary may establish regulations for the publication of any pending application when publication is requested by the owner.

Chapter 6.—EXAMINATION, RESPONSE TIME, INITIAL APPEALS

Sec. 61. Examination of Application.

The Secretary shall cause an examination to be made of the application and if on such examination it is determined that the applicant is entitled to plant variety protection under the law, the Secretary shall issue a notice of allowance of plant variety protection therefor as hereinafter provided.

Sec. 62. Notice of Refusal; Reconsideration.

(a) Whenever an application is refused, or any objection or requirement made by the examiner, the Secretary shall notify the applicant thereof, stating the reasons therefor, together with such information and references as may be useful in judging the propriety of continuing the prosecution of the application; and if after receiving such notice the applicant requests reconsideration, with or without amendment, the application shall be reconsidered.

(b) For taking appropriate action after the mailing to him of an action other than allowance, an applicant shall be allowed six months, or such other time as the Secretary in exceptional circumstances shall set in the refusal, or such time as he may allow as an extension. Without such extension, action may be taken up to three months late by paying an additional fee to be prescribed by the Secretary.

Sec. 63. Initial Appeal.

When an application for plant variety protection has been refused by the Plant Variety Protection Office, the applicant may appeal to the Secretary. The Secretary shall seek the advice of the Plant Variety Protection Board on all appeals, before deciding the appeal.

Chapter 7.—APPEALS TO COURTS AND OTHER REVIEW

Sec. 71. Appeals.

From the decisions made under sections 44, 63, 91, 92, and 128 appeal may, within sixty days or such further time as the Secretary allows, be taken under the Federal Rules of Appellate Procedure. The Court of Customs and Patent Appeals and the United States Courts of Appeals shall have jurisdiction, with venue in the case of the latter as stated in 28 U.S.C. 2343.

Sec. 72. Civil Action Against Secretary.

An applicant dissatisfied with a decision under section 63 or 91 of this title, may, as an alternative to appeal, have remedy by civil action against the Secretary in the United States District Court for the District of Columbia. Such action shall be commenced within sixty days after such decision or within such further time as the Secretary allows. The court may, in the case of review of a decision by the Secretary refusing plant variety protection, adjudge that such applicant is entitled to receive a certificate of plant variety protection for his variety as specified in his application as the facts of the case may appear, on compliance with the requirements of this Act.

Sec. 73. Appeal or Civil Action in Contested Cases.

(a) A party to a proceeding under section 92 of this title, dissatisfied with the decision, may take an appeal under section 71 or may have remedy by civil action if commenced within sixty days after such decision or within such further time as the Secretary allows. A party contemplating appeal as provided herein shall notify all adverse parties of his intention and any such adverse party, not the Secretary, shall have the right, by notice served within ten days of the notice to him, to elect that any review shall be by civil action. In such suits the record in the

Plant Variety Protection Office shall be admitted on motion of any party upon the terms and conditions as to costs, expenses, and the further cross-examination of witnesses, as the court imposes, without prejudice to the right of the parties to take further testimony. The testimony and exhibits of the record in the Plant Variety Protection Office when admitted shall have the same effect as if originally taken and produced in the suit.

(b) Such suit may be instituted against the party in interest as shown by the record of the Plant Variety Protection Office at the time of the decision complained of, but any party in interest may become a party to the action. If there be adverse parties residing in a plurality of districts not embraced within the same State, or an adverse party residing in a foreign country, the United States District Court for the District of Columbia, or any United States district court to which it may transfer the case, shall have jurisdiction and may issue summons against the adverse parties directed to the marshal of any district in which any adverse party resides. Summons against adverse parties residing in foreign countries may be served by publication or otherwise as the court directs. The Secretary shall not be made a party but he shall have the right to intervene. Judgment of the court in favor of the right of an applicant to plant variety protection shall authorize the Secretary to issue a certificate of plant variety protection on the filing in the Plant Variety Protection Office of a certified copy of the judgment and on compliance with the requirements of this Act.

Chapter 8.—CERTIFICATES OF PLANT VARIETY PROTECTION

Sec. 81. Plant Variety Protection.

(a) If it appears that a certificate of plant variety protection should be issued on an application, a written notice of allowance shall be given or mailed to the owner. The notice shall specify the sum, constituting the issue fee, which shall be paid within one month thereafter.

(b) Upon timely payment of this sum, and provided that deposit of seed has been made in accordance with section 52(3), the certificate of plant variety protection shall issue.

(c) If any payment required by this section is not timely made, but is submitted with an additional fee prescribed by the Secretary within nine months after the due date or within such further time as the Secretary may allow, it shall be accepted.

Sec. 82. How Issued.

A certificate of plant variety protection shall be issued in the name of the United States of America under the seal of the Plant Variety Protection Office, and shall be signed by the Secretary or have his signature placed thereon, and shall be recorded in the Plant Variety Protection Office.

Sec. 83. Contents and Term of Plant Variety Protection.

(a) Every certificate of plant variety protection shall certify that the breeder (or his successor in interest) his heirs or assignees, has the right, during the term of the plant variety protection, to exclude others from selling the variety, or offering it for sale, or reproducing it, or importing it, or exporting it, or using it in producing (as distinguished from developing) a hybrid or different variety therefrom, to the extent provided by this Act. If the owner so elects, the certificate shall also specify that in the United States seed of the variety shall be sold by variety name only as a class of certified seed and, if specified, shall also conform to the number of generations designated by the owner. Any rights, or all rights except those elected under the preceding sentence, may be waived; and the certificate shall conform to such waiver. The Secretary may at his discretion permit such election or waiver to be made after certifying and amend the certificate accordingly, without retroactive effect.

(b) The term of plant variety protection shall expire seventeen years from the date of issue of the certificate in the United States. If the certificate is not issued within three years from the effective filing date, the Secretary may shorten the term by the amount of delay in the prosecution of the application attributed by the Secretary to the applicant.

(c) The term of plant variety protection shall also expire if the owner fails to comply with regulations, in force at the time of certifying, relating to replenishing seed in a public repository: *Provided, however*, That this expiration shall not occur unless notice is mailed to the last owner recorded as provided in section 101(d) and he fails, within the time allowed thereafter, not less than three months, to comply with said regulations, paying an additional fee to be prescribed by the Secretary.

Sec. 84. Certificate of Correction of Plant Variety Protection Office Mistake.

Whenever a mistake in a certificate of plant variety protection, incurred through the fault of the Plant Variety Protection Office, is clearly disclosed by the records of the Office, the Secretary may issue a certificate of correction stating the fact and nature of such mistake, under seal, without charge, to be recorded in the records of plant variety protection. A copy thereof shall be attached to each copy of the published specifications or certificate of plant variety protection and such certificate of correction shall be considered as part of the original certificate of plant variety protection. Every such certificate of plant variety protection shall have the same effect as if the same had been originally issued in such corrected form. The Secretary may issue a corrected certificate of plant variety protection without charge in lieu of and with like effect as a certificate of protection.

Sec. 85. Certificate of Correction of Applicant's Mistake.

Whenever a mistake of a clerical or typographical nature, or of minor character, or in the description of the variety, which was not the fault of the Plant Variety Protection Office, appears in a certificate of plant variety protection and a showing has been made that such mistake occurred in good faith, the Secretary may, upon payment of the required fee, issue a certificate of correction in the manner and with attachment of copies as in section 84. If the correction unquestionably could have been made before the certificate issued. Such certificate of plant variety protection shall have the same effect and operation in law on the trial of actions for causes thereafter arising as if the same had been originally issued in such corrected form.

Sec. 86. Correction of Named Breeder.

An error as to the naming of a breeder in the application, without deceptive intent, shall not affect validity of plant variety protection and may be corrected at any time by the Secretary in accordance with regulations established by him or upon order of a federal court before which the matter is called in question. Upon such correction the Secretary shall issue a certificate accordingly. Such correction shall not deprive any person of any rights he otherwise would have had.

Chapter 9.—REEXAMINATION AFTER ISSUE, AND CONTESTED PROCEEDINGS

Sec. 91. Reexamination After Issue.

(a) Any person may, within five years after the issuance of a certificate of plant variety protection, notify the Secretary in writing of facts which may have a bearing on the protectability of the variety, and the Secretary may cause such plant variety protection to be reexamined in the light thereof.

(b) Reexamination of plant variety protection under this section and appeals shall be pursuant to the same procedures and with the same rights as for original examinations.

Abandonment of the procedure while subject to a ruling against the retention of the certificate shall result in cancellation of the plant variety certificate thereon and notice thereof shall be endorsed on copies of the specification of the protected plant variety thereafter distributed by the Plant Variety Protection Office.

(c) If a person acting under subsection (a) makes a prima facie showing of facts needing proof, the Secretary may direct that the reexamination include such interparty proceedings as he shall establish.

Sec. 92. Priority Contest.

(a) If the Secretary determines that two applications of different applicants may be based on the same variety, he may:

(1) Initiate a priority contest on his own motion whether or not one of the applications may have been certified; or

(2) Issue a certificate on the application having the earliest effective filing date, with notice to all; or

(3) Issue a certificate naming alternative owners, under a single variety name acceptable to both.

(b) On request of any person when a certificate has been issued naming another as an owner or alternative owner, both having applied for protection on the same variety, the Secretary shall institute a priority contest, except that any person shall have forfeited his right to assert priority for the purpose of obtaining plant variety protection when an adverse certificate has issued if he fails to make the request within one year of the mailing of notice specified in part (2) above or if he fails to make the request within the period for taking action after refusal of his application on the basis of the adverse certificate.

"Sec. 93. Effect of Adverse Final Judgment or of Non Action.

(a) A final judgment under section 92 adverse to an application from which no appeal or other review had been or can be taken or had shall constitute cancellation of any certifying on that application, and notice thereof shall be endorsed on copies of the specifications of the protected plant variety thereafter distributed by the Plant Variety Protection Office.

(b) Any person who has not proceeded in accordance with the provision of this chapter shall not be foreclosed or in any way prejudiced with respect to the defense of an infringement suit or affirmative relief under declaratory judgment proceedings.

(c) No person subject to an adverse decision in a proceeding under this chapter shall be foreclosed with respect to asserting comparable grounds in defense of an infringement suit or as a basis for affirmative relief under declaratory judgment proceedings.

Sec. 94. Interfering Plant Variety Protection.

The owner of a certificate of plant variety protection may have relief against another owner of a certificate of the same variety by civil action, and the court may adjudge the question of validity of the respective certificates, or the ownership of the certificate. The provisions of section 73(b) of this title shall apply to actions brought under this section.

TITLE III—PLANT VARIETY PROTECTION AND RIGHTS

Chapter	Section
10. Ownership and Assignment.....	101
11. Infringement of Plant Variety Protection	111
12. Remedies for Infringement of Plant Variety Protection, and Other Actions	121
13. Intent and Severability.....	131
14. Temporary Provision and Related Enactments; Exempted Plants; Miscellaneous	141

Chapter 10.—OWNERSHIP AND ASSIGNMENT

Sec. 101. Ownership and Assignment.

(a) Subject to the provisions of this title, plant variety protection shall have the attributes of personal property.

(b) Applications for certificates of plant variety protection, or any interest in a variety, shall be assignable by an instrument in writing. The owner may in like manner license or grant and convey an exclusive right to use of the variety in the whole or any specified part of the United States.

(c) A certificate of acknowledgment under the hand and official seal of a person authorized to administer oaths within the United States, or in a foreign country, of a diplomatic or consular officer of the United States or an officer authorized to administer oaths whose authority is proved by a certificate of a diplomatic or consular officer of the United States, shall be prima facie evidence of the execution of an assignment, grant, license, or conveyance of plant variety protection or application for plant variety protection.

(d) An assignment, grant, conveyance or license shall be void as against any subsequent purchaser or mortgagee for a valuable consideration, without notice, unless it, or an acknowledgment thereof by the person giving such encumbrance that there is such encumbrance, is filed for recording in the Plant Variety Protection Office within one month from its date or at least one month prior to the date of such subsequent purchase or mortgage.

Sec. 102. Ownership During Testing.

A person who, with notice that release is for testing only, releases possession of seed or other sexually reproducible plant material for testing retains ownership with respect thereto; and any diversion from authorized testing, or any unauthorized retention, of such material by anyone who has knowledge that it is under such notice, or who is chargeable with notice, is prohibited, and violates the property rights of the owner. Anyone receiving the material tagged or labeled with the notice is chargeable with the notice. The owner is entitled to remedy and redress in a civil action hereunder. No remedy available by State or local law is hereby excluded. No such notice shall be used, or if used be effective, when the owner has made identical sexually reproducible plant material available to the public, as by sale thereof.

Chapter 11.—INFRINGEMENT OF PLANT VARIETY PROTECTION

Sec. 111. Infringement of Plant Variety Protection.

Except as otherwise provided in this title, it shall be an infringement of the rights of the owner of a novel variety to perform without authority, any of the following acts in the United States, or in commerce which can be regulated by Congress or affecting such commerce, prior to expiration of the right to plant variety protection but after either the issue of the certificate or the distribution of a novel plant variety with the notice under section 127:

(1) sell the novel variety, or offer it or expose it for sale, deliver it, ship it, consign it, exchange it, or solicit an offer to buy it, or any other transfer of title or possession of it;

(2) import the novel variety into, or export it from, the United States;

(3) sexually multiply the novel variety as a step in marketing (for growing purposes) the variety; or

(4) use the novel variety in producing (as distinguished from developing) a hybrid or different variety therefrom; or

(5) use seed which had been marked "propagation prohibited" or progeny thereof to propagate the novel variety; or

(6) dispense the novel variety to another, in a form which can be propagated, without notice as to being a protected variety under which it was received; or

(7) perform any of the foregoing acts even in instances in which the novel variety is multiplied other than sexually, except in pursuance of a valid United States plant patent; or

(8) instigate or actively induce performance of any of the foregoing acts.

Sec. 112. Grandfather Clause.

Nothing in this Act shall abridge the right of any person, or his successor in interest, to reproduce or sell a variety developed and produced by such person more than one year prior to the effective filing date of an adverse application for a certificate of plant variety protection.

Sec. 113. Right To Save Seed; Crop Exemption.

Except to the extent that such action may constitute an infringement under subsections (3) and (4) of section 111, it shall not infringe any right hereunder for a person to save seed produced by him from seed obtained, or descended from seed obtained, by authority of the owner of the variety for seeding purposes and use such saved seed in the production of a crop for use on his farm, or for sale as provided in this section: *Provided*, That without regard to the provisions of section 111(3) it shall not infringe any right hereunder for a person, whose primary farming occupation is the growing of crops for sale for other than reproductive purposes, to sell such saved seed to other persons so engaged, for reproductive purposes, provided such sale is in compliance with such State laws governing the sale of seed as may be applicable. A bona fide sale for other than reproductive purposes, made in channels usual for such other purposes, of seed produced on a farm either from seed obtained by authority of the owner for seeding purposes or from seed produced by descent on such farm from seed obtained by authority of the owner for seeding purposes shall not constitute an infringement. A purchaser who diverts seed from such channels to seeding purposes shall be deemed to have notice under section 127 that his actions constitute an infringement.

Sec. 114. Research Exemption.

The use and reproduction of a protected variety for plant breeding or other bona fide research shall not constitute an infringement of the protection provided under this Act.

Sec. 115. Intermediary Exemption.

Transportation or delivery by a carrier in the ordinary course of its business as a carrier, or advertising by a person in the advertising business in the ordinary course of that business, shall not constitute an infringement of the protection provided under this Act.

Chapter 12.—REMEDIES FOR INFRINGEMENT OF PLANT VARIETY PROTECTION, AND OTHER ACTIONS

Sec. 121. Remedy for Infringement of Plant Variety Protection.

An owner shall have remedy by civil action for infringement of his plant variety protection under section 111. If a variety is sold under the name of a variety shown in a certificate, there is a prima facie presumption that it is the same variety.

Sec. 122. Presumption of Validity; Defenses.

(a) Certificates of plant variety protection shall be presumed valid. The burden of establishing invalidity of a plant variety protection shall rest on the party asserting invalidity.

(b) The following shall be defenses in any action charging infringement and shall be pleaded: (1) noninfringement, absence of

liability for infringement, or unenforceability; (2) invalidity of the plant variety protection in suit on any ground specified in section 42 of this title as a condition for protectability; (3) invalidity of the plant variety protection in suit for failure to comply with any requirement of section 52; (4) that the asserted infringement was performed under an existing certificate adverse to that asserted and prior to notice of the infringement; and (5) any other fact or act made a defense by this Act.

Sec. 123. Injunction.

The several courts having jurisdiction of cases under this title may grant injunctions in accordance with the principles of equity to prevent the violation of any right hereunder on such terms as the court deems reasonable.

Sec. 124. Damages.

(a) Upon finding an infringement the court shall award damages adequate to compensate for the infringement but in no event less than a reasonable royalty for the use made of the variety by the infringer, together with interest and costs as fixed by the court.

(b) When the damages are not determined by the jury, the court shall determine them. In either event the court may increase the damages up to three times the amount determined.

(c) The court may receive expert testimony as an aid to the determination of damages or of what royalty would be reasonable under the circumstances.

(d) As to infringement prior to, or resulting from a planting prior to, issuance of a certificate for the infringed variety, a court finding the infringer to have established innocent intentions, shall have discretion as to awarding damages.

Sec. 125. Attorney Fees.

The court in exceptional cases may award reasonable attorney fees to the prevailing party.

Sec. 126. Time Limitation on Damages.

(a) No recovery shall be had for that part of any infringement committed more than six years (or known to the owner more than one year) prior to the filing of the complaint or counterclaim for infringement in the action.

(b) In the case of claims against the United States Government for unauthorized use of a protected variety, the period between the date of receipt of written claim for compensation by the department or agency of the Government having authority to settle such claim, and the date of mailing by the Government of a notice to the claimant that his claim has been denied shall not be counted as part of the period referred to in the preceding paragraph.

Sec. 127. Limitation of Damages; Marking and Notice.

Owners may give notice to the public by physically associating with or affixing to the container of seed of a novel variety or by fixing to the novel variety, a label containing the words "Propagation Prohibited" and after the certificate issues, such additional words as "U.S. Protected Variety". In the event the novel variety is distributed by authorization of the owner and is received by the infringer without such marking, no damages shall be recovered against such infringer by the owner in any action for infringement, unless the infringer has actual notice or knowledge that propagation is prohibited or that the variety is a protected variety, in which event damages may be recovered only for infringement occurring after such notice. As to both damages and injunction, a court shall have discretion to be lenient as to disposal of materials acquired in good faith by acts prior to such notice.

Sec. 128. False Marking; Cease and Desist Orders.

(a) Each of the following acts, if performed in connection with the sale, offering for sale, or advertising of sexually reproducible plant material, is prohibited, and the Secretary may, if he determines after an opportunity for hearing that the act is being so performed, issue an order to cease and desist, said order being binding unless appealed under section 71:

(1) Use of the words "U.S. Protected Variety" or any word or number importing that the material is a variety protected under certificate, when it is not.

(2) Use of any wording importing that the material is a variety for which an application for plant variety protection is pending, when it is not.

(3) Use of the phrase "propagation prohibited" or similar phrase without reasonable basis, a statement of this basis being promptly filed with the Secretary if the phrase is used beyond testing and no application has been filed. Any reasonable basis expires one year after the first sale of the variety except as justified thereafter by a pending application or a certificate still in force.

(b) Anyone convicted of violating a binding cease and desist order, or of performing any act prohibited in subsection (a) of this section for the purpose of deceiving the public, shall be fined not more than \$10,000 and not less than \$500.

(c) Anyone whose business is damaged or is likely to be damaged by an act prohibited in subsection (a) of this section, or is subjected to competition in connection with which such act is performed, may have remedy by civil action.

Sec. 129. Nonresident Proprietors; Service and Notice.

Every owner not residing in the United States may file in the Plant Variety Protection Office a written designation stating the name and address of a person residing within the United States on whom may be served process or notice of proceedings affecting the plant variety protection of rights thereunder. If the person designated cannot be found at the address given in the last designation, or if no person has been designated, the United States District Court for the District of Columbia shall have jurisdiction and summons shall be served by publication or otherwise as the court directs. The court shall have the same jurisdiction to take any action respecting the plant variety protection, or rights thereunder that it would have if the owner were personally within the jurisdiction of the court.

Chapter 13.—INTENT AND SEVERABILITY

Sec. 131. Intent.

It is the intent of Congress to provide the indicated protection for new varieties by exercise of any constitutional power needed for that end, so as to afford adequate encouragement for research, and for marketing when appropriate, to yield for the public the benefits of new varieties. Constitutional clauses 3 and 8 of article I, section 8 are both relied upon.

Sec. 132. Severability.

If this Act is held unconstitutional as to some provisions or circumstances, it shall remain in force as to the remaining provisions and other circumstances.

Chapter 14.—TEMPORARY PROVISION AND RELATED ENACTMENTS; EXEMPTED PLANTS; MISCELLANEOUS

Sec. 141. Effective Date.

This Act shall take effect upon enactment. Applications may be filed with the Secretary and held by him until the Office of Plant Variety Protection is organized and in operation.

Sec. 142. Amendment of Federal Seed Act.

The Federal Seed Act (53 Stat. 1275) is amended as follows:

(a) By adding at the end thereof:

"TITLE V—SALE OF UNCERTIFIED SEED OF PROTECTED VARIETY

"Section 501.

"(a) It shall be unlawful in the United States or in interstate or foreign commerce to sell by variety name seed not certified by an official seed certifying agency when it is a variety for which a certificate of plant variety protection under the Plant Variety Protection Act specifies sale only as a class of certified seed: *Provided*, That seed from a certified lot may be labeled as to variety name when used in a mixture by, or with the approval of, the owner of the variety."

(b) By adding at the end of section 102 the following wording: "Seed of a variety for which a certificate of plant variety protection under the Plant Variety Protection Act specifies sale only as a class of certified seed shall be certified only when

"(1) the basic seed from which the variety was produced was furnished by authority of the owner of the variety if the certification is made during the term of protection, and

"(2) it conforms to the number of generations designated by the certificate, if the certificate contains such a designation."

Sec. 143. Amendment of Judicial Code.

Title 28 of the United States Code, entitled Judicial Code and Judiciary, is amended as follows:

(a) After section 1544 add:

"Sec. 1545. Decision of the Plant Variety Protection Office.

"The Court of Customs and Patent Appeals shall have nonexclusive jurisdiction of appeals under section 71 of the Plant Variety Protection Act."

(b) In section 1338 after "Patents" in the heading, after "patents" and after "patent" (both occurrences) insert ", plant variety protection".

(c) After section 2351 add:

2353. The Court of appeals has nonexclusive jurisdiction to hear appeals under section 71 of the Plant Variety Protection Act.

Sec. 144. Exempted Plants.

The provisions of this Act shall not apply to the seeds, plants, or transplants of okra, celery, peppers, tomatoes, carrots, and cucumbers.

Sec. 145. Short Title.

This Act may be cited as the "Plant Variety Protection Act".

Mr. POAGE (during the reading of the bill). Mr. Chairman, I ask unanimous consent that the bill be considered as read and open to amendment at any point and printed at his point in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Texas?

There was no objection.

The CHAIRMAN. Are there any amendments?

AMENDMENT OFFERED BY MR. POAGE

Mr. POAGE. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. POAGE of Texas: Page 43, between line 17 and line 18, insert the following:

"(d) In section 1498 and the following new subsection:

"(d) Hereafter, whenever a plant variety protected by a certificate of plant variety protection under the laws of the United States shall be infringed by the United

States, by a corporation owned or controlled by the United States, or by a contractor, subcontractor or any person, firm, or corporation acting for the Government and with the authorization and consent of the Government, the exclusive remedy of the owner of such certificate shall be by action against the United States in the Court of Claims for the recovery of his reasonable and entire compensation as damages for such infringement: *Provided*, That a Government employee shall have a right of action against the Government under this subsection except where he was in a position to order, influence or induce use of the protected plant variety by the Government: *Provided, however*, That this subsection shall not confer a right of action on any certificate owner or any assignee of such owner with respect to any protected plant variety made by a person while in the employment or service of the United States, where such variety was prepared as a part of the official functions of the employee, or in the preparation of which Government time, material, or facilities were used: *And provided further*, That before such action against the United States has been instituted, the appropriate corporation owned or controlled by the United States or the head of the appropriate agency of the Government, as the case may be, is authorized to enter into an agreement with the certificate owner in full settlement and compromise, for the damages accrued to him by reason of such infringement and to settle the claim administratively out of available appropriations."

Mr. POAGE. Mr. Chairman, this amendment was approved by the committee and has the support of the committee. It is designed simply to give a forum to provide an appeal and fixes the Court of Claims as that agency.

Mr. Chairman, I urge the adoption of the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Texas (Mr. POAGE).

The amendment was agreed to.

AMENDMENT OFFERED BY MR. HALL

Mr. HALL. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. HALL: On page 9, line 25, after "authorized" strike out all through the period after "Act" in line 4, page 10, and insert in lieu thereof: "shall be recovered to the Treasury of the U.S.A., and expenses needed for the administration of this act shall come through the nation's regular budgetary, authorization, and appropriations process."

(Mr. HALL asked and was given permission to revise and extend his remarks.)

Mr. HALL. Mr. Chairman, I certainly shall not take 5 minutes.

If one will take the bill and look at the bottom of page 9, after the phrase, "the fees authorized," my amendment would simply strike "by this section shall be established to substantially cover the costs of administration of this Act. Such fee shall be deposited into a fund to be available, without fiscal year limitation, for the administration of this Act."

I leave all of the rest of the wording of the distinguished committee in there, stating that the initial capital of the fund shall consist of appropriations authorized herewith can be made and that the Secretary may change the initial fee of \$50 if he sees fit.

All I am inserting in lieu of that phrase

which is stricken is simply that funds so contributed can be recovered into the Treasury of the United States and that expenses needed for the implementation of this act will have to come through the regular budgetary process of authorization of the legislative committee and appropriations of the Committee on Appropriations.

Mr. Chairman, in my opinion it is a simple amendment. I hope it will be accepted.

Mr. Chairman, I am afraid that with the speed with which we are acting, it has precluded prior discussion and distribution of the amendment. I am sure, Mr. Chairman, this comes about as a result of accepting Senate-passed legislation by one of our committees. I have absolutely nothing against the purpose of this act. In fact, I am strongly for it. I believe that the two greatest things that have ever happened to agriculture have been the technical breakthroughs in hybrid and sexually produced plants. I think they should be copyrighted and protected along with the rubber-tired tractor.

So, Mr. Chairman, I offer this amendment simply in support of keeping our Government a constitutional government and avoiding backdoor raids on the Treasury, keeping that from happening, and piling expenses upon us again and again.

Mr. POAGE. Mr. Chairman, I rise in opposition to the amendment.

(Mr. POAGE asked and was given permission to revise and extend his remarks.)

Mr. POAGE. Mr. Chairman, I do not want to be in opposition to what the gentleman from Missouri has suggested, because I think that basically he probably has a sound approach on this procedure. This bill, however, was presented to the committee and it has been before the committee for several months. However, the presentation that the gentleman from Missouri is making was not submitted to the committee nor any request that we handle it in this way. Rather, it was suggested that the procedure used in the bill was the most expeditious and cheapest way of handling these funds. It all comes out to exactly the same amount of money whether you put it into an administrative fund and pay the expenses out of that fund or whether you put it into the Treasury and pay the expenses for its operation out of the Treasury.

It is my belief that you save some of the overlapping of the work that is done here in the Congress and some duplication by using the direct method.

We do not think that it involves any particular amount of money one way or the other, but the committee felt that it was a simpler and a more direct approach to use the money you took from these individuals who sought a certificate—and they are the ones who pay it, not the general taxpayers, because it is not tax money that is taken in. It is money you take from these people—we felt that it would be simpler and easier to put that in a fund and use directly.

We thought that it would probably be more likely to keep the cost down by letting everybody see that these costs

were coming out of the money that they were paying in. We thought that when they had a monetary interest in maintaining this fund that possibly there would be a better accounting of it than if the money went into the Treasury, and then we appropriated tax money to perform this particular function.

That is the reason the committee took the course we did take. It may not be a good reason but we thought it was. Certainly, we do not claim that this is the only way the matter might be handled.

I do not think that it would destroy the bill if you adopt the amendment offered by the gentleman from Missouri (Mr. HALL). The committee is not going to run off and get mad if you adopt the amendment. The amendment has certain merits to it, and I would certainly be the first one to admit this, but I think we would save a little money by not adopting the amendment.

Mr. HUNGATE. Mr. Chairman, will the gentleman yield?

Mr. POAGE. I yield to the gentleman from Missouri.

Mr. HUNGATE. Mr. Chairman, I have no objection myself to the amendment offered by the gentleman from Missouri, but I would like to ask the gentleman a procedural question concerning the time limit on this Congress, that if the Senate did not accept this amendment that it would be a reasonable likelihood we would never finish action on the bill?

Mr. POAGE. I think that is a reasonable likelihood.

Mr. HUNGATE. I thank the gentleman.

Mr. JACOBS. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I commend the gentleman from Missouri for offering the amendment, and I would point out to the committee that insofar as expediting the passage of this legislation is concerned, it depends apparently on the subject of the legislation how expedited legislation can be. I could name a few subjects that could be run through in 48 hours. So I think if people put their minds to it the bill can get through in good shape.

The gentleman from Missouri has made the point that it would be less expensive to the taxpayers to administer these fees in the normal process of governmental business, and that to turn the fees over to an administrator with no requirement that he report to the Congress would in essence make a private business out of a public function.

Mr. Chairman, I think the gentleman is to be commended for offering his amendment, and I support the amendment.

Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Missouri (Mr. HALL).

The question was taken; and on a division (demanded by Mr. HALL) there were—ayes 25, noes 13.

So the amendment was agreed to.

The CHAIRMAN. Are there further amendments? If not under the rule the Committee rises.

Accordingly the Committee rose and the Speaker having resumed the chair,

Mr. CAREY, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (S. 3070), to encourage the development of novel varieties of sexually reproduced plants and to make them available to the public, providing protection available to those who breed, develop, or discover them, and thereby promoting progress in agriculture in the public interest, pursuant to House Resolution 1290 he reported the bill back to the House with sundry amendments adopted by the Committee of the Whole.

The SPEAKER. Under the rule the previous question is ordered.

Is a separate vote demanded on any amendment? If not the Chair will put them en gros.

The amendments were agreed to.

The SPEAKER. The question is on the third reading of the bill.

The bill was ordered to be read a third time, and was read the third time.

The SPEAKER. The question is on the passage of the bill.

The bill was passed.

A motion to reconsider was laid on the table.

RESIGNATION FROM COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

The SPEAKER laid before the House the following resignation from a committee:

WASHINGTON, D.C.,
November 17, 1970.

HON. JOHN W. MCCORMACK,
Speaker, U.S. House of Representatives,
Washington, D.C.

DEAR MR. SPEAKER: I am tendering herewith my resignation as a member of the House Committee on Interstate and Foreign Commerce.

I am apprising Chairman Staggers of this action so that you and he may make the appropriate arrangements.

I want to wish you the very best in retirement. I have greatly appreciated your kindness and consideration to me ever since I came to Congress. If I make it to the Senate and can ever be of help to you there, please consider me your Senator.

Yours very truly,

RICHARD L. OTTINGER,
Member of Congress.

The SPEAKER. Without objection, the resignation will be accepted.

There was no objection.

PERMISSION FOR COMMITTEE ON RULES TO FILE REPORTS

Mr. ALBERT. Mr. Speaker, I ask unanimous consent that the Committee on Rules may have until midnight tonight to file three privileged reports.

The SPEAKER. Without objection, it is so ordered.

There was no objection.

LEGISLATIVE PROGRAM

(Mr. GERALD R. FORD asked and was given permission to address the House for 1 minute.)

Mr. GERALD R. FORD. Mr. Speaker, will the distinguished majority leader let us know if the plans for tomorrow are the

same as he indicated a few moments ago, which, as I understood it, was to bring up the Foreign Assistance Act of 1971 and then one of the two revenue bills, either one from the Committee on Ways and Means or one for the District of Columbia?

Mr. ALBERT. The gentleman is correct.

Mr. GERALD R. FORD. I thank the gentleman.

APPOINTMENT OF MEMBERS TO COMMITTEES

Mr. MILLS. Mr. Speaker, by direction of the Committee on Committees, I offer a privileged resolution (H. Res. 1298) and ask for its immediate consideration.

The Clerk read the resolution as follows:

H. RES. 1298

Resolved, That the following-named Members be, and they are hereby, elected to the following standing committees of the House of Representatives:

Committee on Government Operations: George W. Collins, of Illinois;
Committee on Interstate and Foreign Commerce: Bertram L. Podell, of New York.

The resolution was agreed to.

A motion to reconsider was laid on the table.

THE SUPERSONIC TRANSPORT

(Mr. ADAMS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ADAMS. Mr. Speaker, I rise today to indicate my support of the supersonic transport program. Unfortunately, this domestic program has become a cause celebre to those interested in protecting the environment and was, therefore, defeated by a vote of 52 to 41 in the Senate. I say "unfortunately" because making this program the whipping boy for the problems existing in our environment diverts the public from the real problems of air and water pollution in our Nation. The building and flying of two prototype American SST airplanes will provide less pollution of the atmosphere than the automobile creates in a single day in any major city.

I support the bill offered by Senator MAGNUSON to protect the Nation against sonic boom and sideline noise from all airplanes, including the SST. This is the proper approach to take regarding any noise factors which may be involved from supersonic airplanes. As I have stated to Members of the House before, I have seen the British-French Concorde and talked with its designer and have also talked with the designer of the Russian Tupelov-144, and these airplanes are not only in existence but clearly demonstrate that the supersonic transport is a valid aeronautical concept. Further, both nations intend to fly this airplane during the decade of the 1970's in commercial air traffic.

When the possible pollution and noise effects of the supersonic transport are put into proper perspective, it then becomes incredible to believe that the United States would stop development of this airplane. The opponents of the SST have generally opposed any continua-

tion of the space program and have demanded reduction of the defense program, and if they now dismantle the domestic airplane industry, there will be no industrial support for the maintenance of an economy in the United States that can support our people and provide the industrial and technical support to save our environment. The less sophisticated an industrial society is, the more it will pollute the environment. The original industrial nations of the world destroyed their environment through use of heavy industrial coals, the dumping of sewage and byproducts into streams, and the littering of the landscape because of the inability of the society to provide enough tax money to enable the Government to clean up the industrial cities.

We must develop an answer to the competition of the industrial state and human beings for the natural resources of the world and develop a means whereby individuals can obtain the items which produce a better life and at the same time maintain an ability for human life to survive on the planet.

As I mentioned earlier, the SST is diverting the attention of the public from the real problems of the industrial, urban system. The sheer magnitude of the pollution caused by the internal combustion engine in the automobile, the massive pollution caused by ineffective treatment of human and industrial wastes, and the deadly dangers of massive overpopulation dwarf any effects of the SST. This airplane is like a very tiny tail on a huge dog.

In conclusion, I would point out that the amount of money involved in this program is very small when compared to the other items in the Federal budget and it is one of the few nonspace, non-military items available for future development of our industry. The money factor becomes important at this time because we have already spent over \$700 million in development of this airplane and the prototypes are over 50 percent completed. In addition, the SST for fiscal year 1971 has been moving under a continuing appropriation and we have already paid for development in fiscal year 1971 for the period from July 1, 1970, through January 1, 1971, which is half of the year. A further complication is the cost of stopping the program with the involved contract commitments and penalty clauses which will mean the Federal Government may sustain contract costs over \$100 million.

In addition we are faced with a very difficult dollar balance in our trade relations with other nations. I have previously placed in the Record during the debate on the trade bill the amount of money which has been earned by the United States through sale of jet transports to other nations. If it were not for the sale of these sophisticated airplanes, plus agricultural products, we would suffer a devastating balance-of-trade deficit. If this is compounded by the Europeans selling Concorde or TU-144's to the United States, we will have an impossible trade balance, and I would say to my friends who favor free trade, they have seen nothing to compare with the restrictive trade bills that will appear before the end of the 1970's if we are

buying foreign jet airplanes in the 1970's.

This program will create jobs for American workmen and will not require restrictive trade quotas or any other type of protection. The amount that the American consumers will pay because of restrictive trade quotas or tariffs will be many times the \$290 million requested for this program.

I, therefore, urge my colleagues to vote to continue the SST program on the grounds that it is not a prime factor in protecting our environment, that it will provide jobs for Americans, that its cost is minimal compared to the other items, and that we will need it to balance our trade in the decade of the 1970's.

HOUSE APPROVAL OF THE ANIMAL WELFARE ACT OF 1970

(Mr. WHITEHURST asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. WHITEHURST. Mr. Speaker, the list is long, the abuse and suffering have gone on for a long time, but at last man for a change is listening to voices other than his own. The House of Representatives has taken another important step in reducing unnecessary cruelty to animals by approving and sending to the Senate H.R. 19846, the Animal Welfare Act of 1970.

Since the passage of the Poage bill in August of 1966, many things have been learned about the effectiveness of some of the provisions contained in that law. Its primary concern was to stop traffic in stolen pets, as well as the care and handling of laboratory animals. Not only have some of the law's provisions proven not as effective as had been hoped, but it has also become obvious that the principle of humane treatment of all animals must be expanded. This is the purpose of the Animal Welfare Act of 1970.

The Animal Welfare Act is the result of many days of hearings and executive sessions of the Subcommittee on Livestock and Grains of the House Agriculture Committee. It does not contain all of the features I was seeking when I introduced the original legislation, H.R. 13957, but it does contain the major points. This bill also contains many of the ideas written into H.R. 18637, introduced by my colleague, the gentleman from Washington (Mr. FOLEY).

Basically, H.R. 19846 accomplishes two ends:

The bill expands the definition of the term "animal" to mean all animals, as determined by the Secretary of Agriculture, instead of simply pet animals as designated in Public Law 80-544.

The bill also broadens the protective features of the law to include road shows, circuses, zoos, and carnivals, as well as expanding coverage of research facilities.

In the attempt to accomplish these ends it is important that we not cause difficulties for progress in the fields of science and medicine. This was of concern to me as well as many members of the committee. I offered amendments to my bill in an attempt to clarify this point, and the committee devoted a section of the bill to the intent of the legislation in

this and other fields. I am including a copy of the "Committee Intent" at this point for the benefit of my colleagues.

COMMITTEE INTENT

In its consideration of H.R. 19846 the committee carefully considered both the language and the legal construction of that language in several sections of the bill. In reflection of that consideration the committee submits the following expressions of intent:

(1) In regard to the amendment to section 2(b) of the Act, the committee does not contemplate the designation of private citizens or non-Federal Government employees in the administration of this legislation.

(2) In regard to the amendment to section 13 of the Act, it is the intention of the committee that the Secretary neither directly nor indirectly in any manner interfere with or harass research facilities during the conduct of actual research and experimentation. The important determination of when an animal is in actual research is left to the research facility itself. Research or experimentation is also intended to include use of animals as "teaching aids in educational institutions".

(3) In regard to the amendment to section 17 of this Act, the committee intends that inspection under this section shall be specifically limited to searches for lost or stolen pets by officers of the law (not owners themselves) and that the term "legally constituted law enforcement agencies" means agencies with general law enforcement authority and not those agencies whose law enforcement duties are limited to enforcing local animal regulations. It is not intended that this section be used by private citizens or law enforcement officers to harass research facilities and in no event shall such officers inspect the animals when the animals are undergoing actual research or experimentation.

(4) In regard to the amendments to Section 20 of the Act, the committee reiterates its policy expressed in the conference report on P.L. 89-544 that in the case of research facilities the Secretary may grant individual extensions of time to certain of these facilities if he is convinced that these facilities will be able to meet the requirements of the regulations within a reasonable length of time. The purpose of this authority is to enable those research institutions whose compliance depends on obtaining additional funds for construction or personnel to secure such funds.

In this connection the committee also urges that adequate funds from Federal sources be made available for those research facilities which depend to a large extent on support derived from both State and Federal sources for laboratory facility improvements.

I wish to acknowledge and thank the thousands of people across this great Nation who have actively supported this legislation. The House Agriculture Committee, the Subcommittee on Livestock and Grains, and I have received thousands of pieces of mail, and numerous telephone calls from individuals interested in furthering humane legislation.

The news media have responded generously in helping to publicize the need for this bill. Newspapers, television, radio, magazines, and newsletters have donated time and space to the various aspects of the bill and testimony given in support of it.

The letters, the coverage, the events of our time have helped raise the ecological sense of Congress and we are more aware of the consequences of neglect. The animal welfare bill of 1970 extends humane coverage to many unfor-

Dec. 9, 1970

PLANT VARIETIES. Agreed to House amendments to S. 3070, Novel Plant Varieties Protection bill; the bill now goes to the President. pp. S19831-2

RAILWAY STRIKE. Both Houses passed and agreed to conference report on H.J. Res. 1413, extending until March 1, temporary prohibition of strikes; this measure now goes to the President. pp. S19877-95; H11360-76

NUTRITION AND HUMAN NEEDS. Sen. McGovern introduced Senate Resolution 492 to extend through January 31, 1972, the Select Committee on Nutrition and Human Needs and placed numerous articles in the Record on the subject of hunger. pp. S19751-8

GRAZING FEES. Sen. Hansen called for continuation of the moratorium on grazing fees. pp. S19768-9

AGRICULTURAL AVIATION; WATER POLLUTION; FARM PROGRAMS. Three speeches by Sen. Miller were placed in the Record by various senators: Environmental Implications For Agricultural Aviation; Keynote Address at the Water Pollution Symposium; and Senator Miller's speech at the National Conference on Farm Programs sponsored by ASCS. pp. S19770-2; S19775-7; S19778-9

MILK. Sen. Mathias praised a Maryland Holstein cow named Ballard, world champion milk producer. p. S19779

ECONOMY. Sen. Mathias reviewed Arthur Burns' speech "Basis For Lasting Prosperity", and placed it in the Record. pp. S19797-800

WINES. Agriculture & Forestry Committee reported without amendment H.R. 14169, to remove export restrictions against domestic wines under P.L. 480. p. S19751

BILLS INTRODUCED

WILDERNESS. S. 4575, by Sen. Metcalf, to designate certain lands as wilderness; to the Committee on Interior and Insular Affairs.

APPROPRIATIONS. H.R. 19928, by Rep. Mahon, a bill making supplemental appropriation for the fiscal year ending June 30, 1971, and for other purposes.

FEDERAL ASSISTANCE. H.R. 19933, by Rep. Fountain et al, to improve the financial management of Federal assistance programs, to facilitate the consolidation of such programs, to strengthen further congressional review of Federal grants-in-aid, to provide a catalog of Federal assistance programs, and to extend and amend the law relating to intergovernmental cooperation; to the Committee on Government Operations.

COMMITTEE HEARINGS ANNOUNCEMENTS DECEMBER 10:

Constitute College of Virgin Islands and University of Guam as land-grant colleges,
H. Agriculture (exec.)
National Environmental Policy Act, H. Merchant Marine
Water carrier mixing rule, Conferees (exec.)

-oOo-

The amendment is as follows:

S. 3431, 91st Congress, 2d Session, is amended by adding a new Section 6 thereto to read as follows:

Sec. 6(a) Section 3(a)(2) of the Securities Act of 1933 (15 U.S.C. 77c(a)(2)) is amended to read as follows:

"(2) Any security issued or guaranteed by the United States or any territory thereof, or by the District of Columbia, or by any State of the United States, or by any political subdivision of a State or territory, or by any public instrumentality of one or more States or territories, or by any person controlled or supervised by and acting as an instrumentality of the Government of the United States pursuant to authority granted by the Congress of the United States; or any certificate of deposit for any of the foregoing; or any security issued or guaranteed by any bank; or any security issued by or representing an interest in or a direct obligation of a Federal Reserve bank; or any interest or participation in any common trust fund or similar fund maintained by a bank exclusively for the collective investment and reinvestment of assets contributed thereto by such bank in its capacity as trustee, executor, administrator, or guardian; or any security which is an industrial development bond (as defined in section 103(c)(2) of the Internal Revenue Code of 1954) the interest on which is excludable from gross income under section 103(a)(1) of such Code if, by reason of the application of paragraph (4) or (6) of section 103(c) of such Code (determined as if paragraphs (4), (A), (5), and (7) were not included in such section 103(c)), paragraph (1) of such section 103(c) does not apply to such security; or any interest or participation in a single or collective trust fund maintained by a bank or in a separate account maintained by an insurance company which interest or participation is issued in connection with (A) a stock bonus, pension, or profit-sharing plan which meets the requirements for qualification under section 401 of the Internal Revenue Code of 1954, or (B) an annuity plan which meets the requirements for the deduction of the employer's contribution under section 404(a)(2) of such Code, other than any plan described in clause (A) or (B) of this paragraph (1) the contributions under which are held in a single trust fund maintained by a bank or in a separate account maintained by an insurance company for a single employer and under which an amount in excess of the employer's contribution is allocated to the purchase of securities (other than interests or participations in the trust or separate account itself) issued by the employer or by any company directly or indirectly controlling, controlled by or under common control with the employer or (ii) which covers employees some or all of whom are employees within the meaning of section 401(c)(1) of such Code. The Commission, by rules and regulations or order, shall exempt from the provisions of section 5 of this title any interest or participation issued in connection with a stock bonus, pension, profit-sharing, or annuity plan which covers employees some or all of whom are employees within the meaning of section 401(c)(1) of the Internal Revenue Code of 1954, if and to the extent that the Commission determines this to be necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this title. For purposes of this paragraph, a security issued or guaranteed by a bank shall not include any interest or participation in any collective trust fund maintained by a bank; and the term 'bank' means any national bank, or any banking institution organized under the laws of any State, territory, or the District of Columbia, the business of which is substantially confined to banking and is supervised by the State

or territorial banking commission or similar official; except that in the case of a common trust fund or similar fund, or a collective trust fund, the term 'bank' has the same meaning as in the Investment Company Act of 1940."

(b) Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c) (relating to exempted securities) is amended by inserting after "any municipal corporate instrumentality of one or more States;" in paragraph (12) the following: "or any security which is an industrial development bond (as defined in section 103(c)(2) of the Internal Revenue Code of 1954) the interest on which is excludable from gross income under section 103(a)(1) of such Code if, by reason of the application of paragraph (4) or (6) of section 103(c) of such Code (determined as if paragraphs (4)(A), (5), and (7) were not included in such section 103(c)), paragraph (1) of such section 103(c) does not apply to such security;

(c) Section 304(a) of the Trust Indenture Act of 1939 (15 U.S.C. 77ddd) (relating to exempted securities) is amended by reclassifying the present text of paragraph (4) thereof as paragraph (4)(A), and by adding a new subparagraph (B) at the end of such paragraph (4), to read as follows:

"(B) any security exempted from the provisions of the Securities Act of 1933, as amended, by paragraph (2) of subsection 3(a) thereof, as amended by Section 401 of the Employment Security Amendments of 1970."

(d) The amendments made by this section shall apply with respect to securities sold after January 1, 1970.

Mr. JAVITS. Mr. President, may we know what this amendment does?

Mr. SPARKMAN. This language has been approved by all the parties concerned. It is legislation that we passed previously, but through a mistake, it was omitted in the mutual fund bill, and this reinstates it.

Mr. JAVITS. It relates to mutual funds?

Mr. SPARKMAN. No. It relates to industrial bonds, the small bonds that we exempted.

Mr. JAVITS. The industrial bonds of municipalities and so forth?

Mr. SPARKMAN. That is correct.

Mr. JAVITS. Does it make any major change?

Mr. SPARKMAN. None whatever. It is simply the language we passed previously.

Mr. JAVITS. I rely on the statement of the Senator.

Mr. SPARKMAN. Mr. President, I move that my amendment be adopted.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Alabama.

The motion was agreed to.

Mr. WILLIAMS of New Jersey. Mr. President, I move that the Senate concur in the amendments of the House as amended.

The PRESIDING OFFICER. The question is on agreeing to the motion to concur in the House amendments as amended.

The motion was agreed to.

RAILROAD LEGISLATION

Mr. SCOTT. Mr. President, I should like to address a question to the distinguished majority leader, as to whether we are likely to have a vote today on possible rail legislation.

Mr. MANSFIELD. Mr. President, in response to the question raised by my distinguished colleague, the minority leader, let me say that I have discussed this matter with several members of the committee on this side, as I am sure he has with members on his side, and it is my understanding that the Committee on Labor and Public Welfare intends to report a resolution of some nature this afternoon. I would hazard a guess, that it may be around 4 o'clock.

If such a resolution is reported, of course, we will turn to its consideration immediately. The Senate should therefore be prepared to stay in session until midnight, if need be, in order to face up to its responsibilities and dispose of any resolution reported by the committee, whether or not it is amended, one way or the other.

Mr. SCOTT. Yes. I think it is better to let darkness fall on this Chamber rather than upon the Nation.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Berry, one of its reading clerks, announced that the House had passed the bill (S. 3070) to encourage the development of novel varieties of sexually reproduced plants and to make them available to the public, providing protection available to those who breed, develop, or discover them, and thereby promoting progress in agriculture in the public interest, with amendments, in which it requested the concurrence of the Senate.

DEVELOPMENT OF CERTAIN PLANTS

Mr. JORDAN of North Carolina. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on S. 3070.

The PRESIDING OFFICER (Mr. HUGHES). laid before the Senate the amendments of the House of Representatives to the bill (S. 3070) to encourage the development of novel varieties of sexually reproduced plants and to make them available to the public, providing protection available to those who breed, develop, or discover them, and thereby promoting progress in agriculture in the public interest, which were on page 9, line 25, strike out all after "authorized" over through and including "Act." in line 4, page 10, and insert "shall be recovered to the Treasury of the United States of America, and expenses needed for the administration of this act shall come through the Nation's regular budgetary, authorization, and appropriations process."

On page 43, immediately above line 18, insert:

(d) In section 1498 add the following new subsection:

"(d) Hereafter, whenever a plant variety protected by a certificate of plant variety protection under the laws of the United States shall be infringed by the United States, by a corporation owned or controlled by the United States, or by a contractor, subcontractor, or any person, firm, or corporation acting for the Government and with the authorization and consent of the Government, the exclusive remedy of the owner of

such certificate shall be by action against the United States in the Court of Claims for the recovery of his reasonable and entire compensation as damages for such infringement: *Provided*, That a Government employee shall have a right of action against the Government under this subsection except where he was in a position to order, influence, or induce use of the protected plant variety by the Government: *Provided, however*, That this subsection shall not confer a right of action on any certificate owner or any assignee of such owner with respect to any protected plant variety made by a person while in the employment or service of the United States, where such variety was prepared as a part of the official functions of the employee, or in the preparation of which Government time, material, or facilities were used: *And provided further*, That before such action against the United States has been instituted, the appropriate corporation owned or controlled by the United States or the head of the appropriate agency of the Government, as the case may be, is authorized to enter into an agreement with the certificate owner in full settlement and compromise, for the damages accrued to him by reason of such infringement and to settle the claim administratively out of available appropriations."

Mr. JORDAN of North Carolina. Mr. President, I move that the Senate concur in the amendments of the House of Representatives.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from North Carolina.

The motion was agreed to.

PUBLIC WORKS AUTHORIZATIONS, 1970

The Senate resumed the consideration of the bill (S. 4572) authorizing the construction, repair, and preservation of certain public works on rivers and harbors for navigation, flood control, and for other purposes.

Mr. HOLLAND. Mr. President, I should like the attention of the distinguished Senator from West Virginia and the distinguished Senator from Kentucky.

I note with pleasure that two beach erosion programs in my State have been approved—one with reference to Lee County, affecting three islands there, and one with reference to Sarasota County, affecting Lido Key there.

I note that the local contributions required are very high, and I take for granted that that is because most of the beach is privately owned. Am I correct in that?

Mr. RANDOLPH. Yes; the able Senator from Florida is correct. Most of the area is privately controlled.

Mr. HOLLAND. One more question: With reference to Lido Key, I note that the Bureau of the Budget suggested that, instead of approving the item as it came to the committee originally, the item be moved over to come under section 201 of the flood control bill because it could qualify for reimbursements or contributions already made prior to authorization. What was done by the committee in meeting or declining to meet that recommendation of the Bureau of the Budget?

Mr. RANDOLPH. We acted upon the recommendation of the Bureau of the Budget and placed the project in the status which has been indicated.

Mr. HOLLAND. In other words, the status under which the prior expenditures—and they were very necessitous—made by local people to prevent the increase of the great damage, could be considered and repaid.

Mr. RANDOLPH. They would be reimbursed under the language of the Corps of Engineers reports.

Mr. HOLLAND. I thank the Senator. I should like to ask one more question. With reference to both of these projects, there is no environmental question, is there? It seems to me that they protect all environmental and conservation values, rather than destroy anything in that field.

Mr. RANDOLPH. The committee was concerned in these projects, as in all projects, that the environmental factors be fully understood. There is no contamination of the environment, as we have studied the matter, which would flow from the projects in which the Senator is interested.

Mr. HOLLAND. In fact, these projects do tend to conserve natural values and to conserve development values and to protect environmental values in each respect, as the Senator from Florida understands.

Mr. RANDOLPH. The Senator is correct. There is a protection. There is even, perhaps, a development that will take place that might conserve and strengthen the environment.

Mr. HOLLAND. I thank the Senator. One more question with reference to the Tampa Harbor. It is the largest harbor in Florida with an annual tonnage of commerce exceeding 30 million tons. I heard with some trepidation the statement made relative to the additional study that would be required as to the environmental aspects of the project which, in effect, would deepen the channel and would widen it coming up from the Gulf of Mexico to the port. It is my understanding instead of involving any hurt to environmental values, that this would tend to prevent such a disaster as we had not long ago, when a foreign vessel coming in with oil, because of the tortuous nature of the present channel and its narrow width, came to grief and there was a large oil spillage there, which brought great damage to the beaches and many property owners, both public and private.

Just what was the statement of the distinguished chairman of the committee with reference to what has to be done in the future on this project?

Mr. RANDOLPH. There would be a restudy of what is called overdigging which is the 5 feet that is involved. There is no disposition to delay the project.

Mr. HOLLAND. There is no requirement in this case for future approval, but the project is ready to move ahead, as I understand it. There is a requirement that local interests make available \$600,000 in cash, at once, so that the project can, in its planning stages, move ahead. Am I correct in my understanding on that?

Mr. RANDOLPH. That is correct. That contribution has been noted.

Mr. HOLLAND. The Tampa Port Authority is prepared to meet its respon-

sibilities as local sponsors as it has in the past and support appropriate and necessary environmental standards. This is evidenced by the fact that the Port of Tampa has engaged the Geological Survey of the Department of the Interior to collect data so that responsible decisions can be made for maximum environmental use of the bays.

Mr. President, I thank the Senator for his answers. I want to add one thing to the record: Not only is the Port of Tampa aided by this but a new port, the Port of Manatee, which is closer to the Gulf of Mexico, has the advantage of part of this deepening. The deeper channel is being put in at Port Manatee in order to reach from the main channel into its own harbor. I suspect this matter was made clear to the committee, but I find no reference to it in the report. Am I correct?

Mr. RANDOLPH. Yes; it was discussed in our considerations in the subcommittee and it was mentioned in the full committee, although the explanation which has been indicated and documented by the Senator from Florida is not in the report. There is recognition of the need not only for the development of one harbor but also for the development of other harbors. That has been spelled out, and the Senator from Florida, knowledgeable in these matters, does well to call this to our attention during colloquy today.

Mr. HOLLAND. I thank the Senator. I call attention, likewise, to the fact that that very situation will probably raise the benefit-to-cost ratio, which is stated here as 2.1, to a figure above that, because Port Manatee is already operating and there will be some upping of that figure, because it does not involve any more Federal costs to complete the service to Port Manatee, because it is putting in its own channel at the required depth to the main channel.

Mr. RANDOLPH. That would result probably in an improved cost-benefit ratio for the project.

Mr. HOLLAND. Mr. President, I want to thank the distinguished Senator from West Virginia, the distinguished Senator from Kentucky (Mr. COOPER), and the committee, for recognizing these real needs in my State. For the State, I wish to thank them.

I apologize to Senators that I have not been able to yield because I am due to attend a conference which begins right now.

Mr. COOPER. If I may respond to the Senator from Florida, I should like to say that the discussion between the Senator from Florida and the Senator from West Virginia is correct. The proviso was put in because of certain questions raised by the Office of Management and Budget, but our language is, as the proviso states:

The Chief of Engineers shall proceed without delay with preconstruction planning of the project.

Mr. FONG. Mr. President—

The PRESIDING OFFICER. (Mr. GOLDWATER). The Senator from Hawaii is recognized.

Mr. FONG. Mr. President, I call up my amendments and ask that they be stated.

The PRESIDING OFFICER. The amendments will be stated.





Public Law 91-577
91st Congress, S. 3070
December 24, 1970

An Act

84 STAT. 1542

To encourage the development of novel varieties of sexually reproduced plants and to make them available to the public, providing protection available to those who breed, develop, or discover them, and thereby promoting progress in agriculture in the public interest.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Plant Variety
Protection Act.

INDEX

	Section
TITLE I—Plant Variety Protection Office.....	1
TITLE II—Protectability of Plant Varieties and Certificates of Protection.....	41
TITLE III—Plant Variety Protection and Rights.....	101

TITLE I—PLANT VARIETY PROTECTION OFFICE

Chapter	Section
1. Organization and Publications.....	1
2. Legal Provisions as to the Plant Variety Protection Office.....	21
3. Plant Variety Protection Fees.....	31

Chapter 1.—ORGANIZATION AND PUBLICATIONS

Section 1. Establishment.

There is hereby established in the Department of Agriculture a bureau to be known as the Plant Variety Protection Office, which shall have the functions set forth in this Act.

Sec. 2. Seal.

The Plant Variety Protection Office shall have a seal with which documents and certificates evidencing plant variety protection shall be authenticated.

Sec. 3. Organization.

The organization of the Plant Variety Protection Office shall, except as provided herein, be determined by the Secretary of Agriculture (hereinafter called the Secretary). The office shall devote itself substantially exclusively to the administration of this Act.

Sec. 4. Restrictions on Employees as to Interest in Plant Variety Protection.

Employees of the Plant Variety Protection Office shall be ineligible during the periods of their employment, to apply for plant variety protection and to acquire directly or indirectly, except by inheritance or bequest, any right or interest in any matters before that office. This section shall not apply to members of the Plant Variety Protection Board who are not otherwise employees of the Plant Variety Protection Office.

Sec. 5. Bond of Employees.

Such employees as the Secretary designates, before entering upon their duties, shall severally give bond, with sureties, in sums prescribed by the Secretary, conditioned for the faithful discharge of their respective duties and that they shall render to the proper officers of the Treasury a true account of all money received by virtue of their offices.

Sec. 6. Regulations.

The Secretary may establish regulations, not inconsistent with law, for the conduct of proceedings in the Plant Variety Protection Office after consultations with the Plant Variety Protection Board.

Sec. 7. Plant Variety Protection Board.

(a) **APPOINTMENT.**—The Secretary shall appoint a Plant Variety Protection Board. The Board shall consist of individuals who are experts in various areas of varietal development covered by this Act. Membership of the Board shall include farmer representation and shall be drawn approximately equally from the private or seed industry sector and from the sector of government or the public. The Secretary or his designee shall act as chairman of the Board without voting rights except in the case of ties.

(b) **FUNCTIONS OF BOARD.**—The functions of the Plant Variety Protection Board shall include:

(1) Advising the Secretary concerning the adoption of Rules and Regulations to facilitate the proper administration of this Act;

(2) Making advisory decisions on all appeals from the examiner. The Board shall determine whether to act as a full Board or by panels it selects; and whether to review advisory decisions made by a panel. For service on such appeals, the Board may select, as temporary members, experts in the area to which the particular appeal relates; and

(3) Advising the Secretary on all questions under section 44.

(c) **COMPENSATION OF BOARD.**—The members of the Plant Variety Protection Board shall serve without compensation except for standard government reimbursable expenses.

Sec. 8. Library.

The Secretary shall maintain a library of scientific and other works and periodicals, both foreign and domestic, in the Plant Variety Protection Office to aid the officers in the discharge of their duties.

Sec. 9. Register of Protected Plant Varieties.

The Secretary shall maintain a register of published specifications of United States protected plant varieties and a file of such other scientific and technical information as may be necessary or practicable.

Sec. 10. Publications.

(a) The Secretary may publish, or cause to be published, in such format as he shall determine to be suitable, the following:

(1) The specifications for plant variety protection including drawings and photographs.

(2) The Official Journal of the Plant Variety Protection Office, including annual indices.

(3) Pamphlet copies of the plant variety protection laws and rules of practice and circulars or other publications relating to the business of the Office.

(b) The Plant Variety Protection Office may print the heading of the drawings or photographs for protected plant varieties for the purpose of photolithography and may provide suitable copy for any lithography to appear on the same page.

(c) The Secretary may (1) establish public facilities for the searching of plant variety protection records and materials, and (2) from time to time, as through an information service, disseminate to the public those portions of the technological and other public information available to or within the Plant Variety Protection Office to encourage innovation and promote the progress of the useful arts.

(d) The Secretary may exchange any of the publications specified for publications desirable for the use of the Plant Variety Protection Office. The Secretary may exchange copies of specifications, drawings, and photographs of United States protected plant varieties for copies

of specifications, drawings, and photographs of applications and protected plant varieties of foreign countries.

Sec. 11. Copies for Public Libraries.

The Secretary may supply printed copies of specifications, drawings, and photographs of protected plant varieties to public libraries in the United States which shall maintain such copies for the use of the public.

Chapter 2.—LEGAL PROVISIONS AS TO THE PLANT VARIETY PROTECTION OFFICE

Sec. 21. Day for Taking Action Falling on Saturday, Sunday, or Holiday.

When the day, or the last day, for taking any action or paying any fee in the United States Plant Variety Protection Office falls on Saturday, Sunday, a holiday within the District of Columbia, or on any other day the Plant Variety Protection Office is closed for the receipt of papers, the action may be taken or the fee paid, on the next succeeding business day.

Sec. 22. Form of Papers Filed.

The Secretary may by regulations prescribe the form of papers to be filed in the Plant Variety Protection Office.

Sec. 23. Testimony in Plant Variety Protection Office Cases.

The Secretary may establish regulations for taking affidavits, depositions, and other evidence required in cases before the Plant Variety Protection Office. Any officer authorized by law to take depositions to be used in the courts of the United States, or of the State where he resides, may take such affidavits and depositions, and swear the witnesses. If any person acts as a hearing officer by authority of the Secretary, he shall have like power.

Sec. 24. Subpoenas, Witnesses.

(a) The clerk of any United States court for the district wherein testimony is to be taken in accordance with regulations established by the Secretary for use in any contested case in the Plant Variety Protection Office shall, upon the application of any party thereof, issue a subpoena for any witness residing or being within such district or within one hundred miles of the stated place in such district, commanding him to appear and testify before an officer in such district authorized to take depositions and affidavits, at the time and place stated in the subpoena. The provisions of the Federal Rules of Civil Procedure relating to the attendance of witnesses and the production of documents and things shall apply to contested cases in the Plant Variety Protection Office insofar as consistent with such regulations.

28 USC app.

(b) Every witness subpoenaed or testifying shall be allowed the fees and traveling expenses allowed to witnesses attending the United States district courts.

(c) A judge of a court whose clerk issued a subpoena may enforce obedience to the process or punish disobedience as in other like cases, on proof that a witness, served with such subpoena, neglected or refused to appear or to testify. No witness shall be deemed guilty of contempt for disobeying such subpoena unless his fees and traveling expenses in going to, and returning from, one day's attendance at the place of examination, are paid or tendered him at the time of the service of the subpoena; nor for refusing to disclose any secret matter except upon appropriate order of the court which issued the subpoena or of the Secretary.

Sec. 25. Effect of Defective Execution.

Any document to be filed in the Plant Variety Protection Office and which is required by any law or regulation to be executed in a specified manner may be provisionally accepted by the Secretary despite a defective execution, provided a properly executed document is submitted within such time as may be prescribed.

Sec. 26. Regulations for Practice Before the Office.

The Secretary shall prescribe regulations governing the admission to practice and conduct of persons representing applicants or other parties before the Plant Variety Protection Office. The Secretary may, after notice and opportunity for a hearing, suspend or exclude, either generally or in any particular case, from further practice before the Office of Plant Variety Protection any person shown to be incompetent or disreputable or guilty of gross misconduct.

Sec. 27. Unauthorized Practice.

Anyone who in the United States engages in direct or indirect practice before the Office of Plant Variety Protection while suspended or excluded under section 26, or without being admitted to practice before the Office, shall be liable in a civil action for the return of all money received, and for compensation for damage done by such person and also may be enjoined from such practice. However, there shall be no liability for damage if such person establishes that the work was done competently and without negligence. This section does not apply to anyone who, without a claim of self-sufficiency, works under the supervision of another who stands admitted and is the responsible party; nor to anyone who establishes that he acted only on behalf of any employer by whom he was regularly employed.

Chapter 3.—PLANT VARIETY PROTECTION FEES**Sec. 31. Plant Variety Protection Fees; Appropriations.**

The Secretary shall, under such regulations as he may prescribe, charge and collect reasonable fees for services performed under this Act. The fees authorized shall be recovered to the Treasury of the United States of America, and expenses needed for the administration of this Act shall come through the Nation's regular budgetary, authorization, and appropriations process. The initial capital of the fund shall consist of appropriations, which are hereby authorized to be made. Until such time as the Secretary prescribes fees as provided by this section, a fee of \$50 shall be charged for filing each application, subject to such adjustment as may be appropriate after fees are prescribed by the Secretary hereunder.

Sec. 32. Payment of Plant Variety Protection Fees; Return of Excess Amounts.

All fees shall be paid to the Secretary, and the Secretary may refund any sum paid by mistake or in excess of the fee required.

TITLE II—PROTECTABILITY OF PLANT VARIETIES AND CERTIFICATES OF PROTECTION

Chapter	Section
4. Protection of Plant Varieties.....	41
5. Applications: Form, Who May File, Relating Back, Confidentiality.....	51
6. Examination: Response Time, Initial Appeals.....	61
7. Appeals to Courts and Other Review.....	71
8. Certificates of Plant Variety Protection.....	81
9. Reexamination After Issue, and Contested Proceedings.....	91

Chapter 4.—PROTECTABILITY OF PLANT VARIETIES

Sec. 41. Definitions and Rules of Construction.

The definitions and rules of construction set forth in this section apply for the purposes of this Act.

(a) The term "novel variety" may be represented by, without limitation, seed, transplants, and plants, and is satisfied if there is:

(1) Distinctness in the sense that the variety clearly differs by one or more identifiable morphological, physiological or other characteristics (which may include those evidenced by processing or product characteristics, for example, milling and baking characteristics in the case of wheat) as to which a difference in genealogy may contribute evidence, from all prior varieties of public knowledge at the date of determination within the provisions of section 42; and

(2) Uniformity in the sense that any variations are describable, predictable and commercially acceptable; and

(3) Stability in the sense that the variety, when sexually reproduced or reconstituted, will remain unchanged with regard to its essential and distinctive characteristics with a reasonable degree of reliability commensurate with that of varieties of the same category in which the same breeding method is employed.

(b) The terms "United States" and "this country" means the United States of America, its territories and possessions, and the Commonwealth of Puerto Rico.

(c) The term "kind" means one or more related species or subspecies singly or collectively known by one common name, for example, soybean, flax, or radish.

(d) The term "date of determination" means the date when there has been at least tentative determination that the variety has been sexually reproduced with recognized characteristics, whether or not the novelty of those characteristics has been determined.

(e) The term "breeder" shall mean the person who—

- (1) directs the final breeding creating the novel variety, or
- (2) discovers the novel variety, and

makes the tentative determination described in subsection (d). Where such actions are conducted by an agent on behalf of his principal, the principal, rather than the agent, shall be considered the breeder. The terms "breed", "develop", "originate", and "discover", and derivatives thereof shall each include the other.

(f) The term "sexually reproduced" shall include any production of a variety by seed.

(g) The term "basic seed" means the seed planted to produce certified or commercial seed.

(h) The term "testing" means testing or experimental use of a variety before any sale thereof. Sale for other than seed purposes of seed or other plant material produced as the result of testing shall not constitute a sale for the purpose of the preceding sentence or for the purpose of the following subsection.

(i) The term "public variety" means a variety sold or used in this country, or existing in and publicly known in this country; but use for the purpose of testing, or sale or use as individual plants not known to be sexually reproducible, shall not make the variety a public variety.

(j) A variety described in a publication as specified in section 42(a) (1)(B) is "effectively available to workers in this country" if a source from which it can be purchased is indicated in such publication or readily determinable or if such publication teaches how to produce

the variety from source-material effectively available to workers in this country.

Sec. 42. Right to Plant Variety Protection; Plant Varieties Protectable.

(a) The breeder of any novel variety of sexually reproduced plant (other than fungi, bacteria, or first generation hybrids) who has so reproduced the variety, or his successor in interest, shall be entitled to plant variety protection therefor, subject to the conditions and requirements of this title unless one of the following bars exists:

(1) Before the date of determination thereof by the breeder, or more than one year before the effective filing date of the application therefor, the variety was (A) a public variety in this country, or (B) effectively available to workers in this country and adequately described by a publication reasonably deemed a part of the public technical knowledge in this country which description must include a disclosure of the principal characteristics by which the variety is distinguished.

(2) An application for protection of the variety based on the same breeder's acts, was filed in a foreign country by the owner or his privies more than one year before the effective filing date of the application filed in the United States.

(3) Another is entitled to an earlier date of determination for the same variety and such other (A) has a certificate of plant variety protection hereunder or (B) has been engaged in a continuing program of development and testing to commercialization, or (C) has within six months after such earlier date of determination adequately described the variety by a publication reasonably deemed a part of the public technical knowledge in this country which description must include a disclosure of the principal characteristics by which the variety is distinguished.

(b) The Secretary may, by regulation, extend for a reasonable period of time the one year time period provided in subsection (a) for filing applications, and may in that event provide for at least commensurate reduction of the term of protection.

Sec. 43. Reciprocity Limits.

Protection under the Act may, by regulation, be limited to nationals of the United States, except where this limitation would violate a treaty and except that nationals of a foreign state in which they are domiciled shall be entitled to so much of the protection here afforded as is afforded by said foreign state to nationals of the United States for the same genus and species.

Sec. 44. Public Interest In Wide Usage.

The Secretary may declare a protected variety open to use on a basis of equitable remuneration to the owner, not less than a reasonable royalty, when he determines that such declaration is necessary in order to insure an adequate supply of fiber, food, or feed in this country and that the owner is unwilling or unable to supply the public needs for the variety at a price which may reasonably be deemed fair. Such declaration may be, with or without limitation, with or without designation of what the remuneration is to be; and shall be subject to review as under section 71 or 72 (any finding that the price is not reasonable being reviewable), and shall remain in effect not more than two years. In the event litigation is required to collect such remuneration, a higher rate may be allowed by the court.

Chapter 5.—APPLICATIONS; FORM, WHO MAY FILE, RELATING BACK, CONFIDENTIALITY

Sec. 51. Application for Recognition of Plant Variety Rights.

(a) An application for a certificate of Plant Variety Protection may be filed by the owner of the variety sought to be protected. The application shall be made in writing to the Secretary, shall be signed by or on behalf of the applicant, and shall be accompanied by the prescribed fee.

(b) An error as to the naming of the breeder, without deceptive intent, may be corrected at any time, in accordance with regulations established by the Secretary.

Sec. 52. Content of Application.

An application for a certificate recognizing plant variety rights shall contain:

(1) The name of the variety except that a temporary designation will suffice until the certificate is to be issued.

(2) A description of the variety setting forth its novelty and a description of the genealogy and breeding procedure, when known. The Secretary may require amplification, including the submission of adequate photographs or drawings or plant specimens, if the description is not adequate or as complete as is reasonably possible, and submission of records or proof of ownership or of allegations made in the application. An applicant may add to or correct the description at any time, before the certificate is issued, upon a showing acceptable to the Secretary that the revised description is retroactively accurate. Courts shall protect others from any injustice which would result. The Secretary may accept records of the breeder and of any official seed certifying agency in this country as evidence of stability where applicable.

(3) A declaration that a viable sample of basic seed necessary for propagation of the variety will be deposited and replenished periodically in a public repository in accordance with regulations to be established hereunder. This declaration may be added by amendment.

(4) A statement of the basis of applicant's ownership.

Sec. 53. Joint Breeders.

(a) When two or more persons are the breeders, one (or his successor) may apply, naming the others.

(b) The Secretary, after such notice as he may prescribe, may issue a certificate of plant variety protection to the applicant and such of the other breeders (or their successors in interest) as may have subsequently joined in the application.

Sec. 54. Death or Incapacity of Breeder.

Legal representatives of deceased breeders and of those under legal incapacity may make application for plant variety protection upon compliance with the requirements and on the same terms and conditions applicable to the breeder or his successor in interest.

Sec. 55. Benefit of Earlier Filing Date.

(a) An application for a certificate of plant variety protection filed in this country based on the same variety, and on rights derived from the same breeder, on which there has previously been filed an application for plant variety protection in a foreign country which affords similar privileges in the case of applications filed in the United States

by nationals of the United States, shall have the same effect as the same application would have if filed in the United States on the date on which the application for plant variety protection for the same variety was first filed in such foreign country, if the application in this country is filed within twelve months from the earliest date on which such foreign application was filed. No application shall be entitled to a right of priority under this section, unless the applicant designates the foreign application in his application or by amendment thereto and, if required by the Secretary, furnishes such copy, translation or both, as the Secretary may specify.

(b) An application for a certificate of plant variety protection for the same variety as was the subject of an application previously filed in the United States by or on behalf of the same person, or by his predecessor in title, shall have the same effect as to such variety as though filed on the date of the prior application if filed before the issuance of the certificate or other termination of proceedings on the first application or on an application similarly entitled to the benefit of the filing date of the first application and if it contains or is amended to contain a specific reference to the earlier filed application.

(c) A later application shall not by itself establish that a characteristic newly described was in the variety at the time of the earlier application.

Sec. 56. Confidential Status of Application.

Applications for plant variety protection and their contents shall be kept in confidence by the Plant Variety Protection Office, by the Board, and by the offices in the Department of Agriculture to which access may be given under regulations. No information concerning the same shall be given without the authority of the owner, unless necessary under special circumstances as may be determined by the Secretary, except that the Secretary may publish the variety names designated in applications, stating the kind to which each applies.

Sec. 57. Publication.

The Secretary may establish regulations for the publication of any pending application when publication is requested by the owner.

Chapter 6.—EXAMINATION, RESPONSE TIME, INITIAL APPEALS

Sec. 61. Examination of Application.

The Secretary shall cause an examination to be made of the application and if on such examination it is determined that the applicant is entitled to plant variety protection under the law, the Secretary shall issue a notice of allowance of plant variety protection therefor as hereinafter provided.

Sec. 62. Notice of Refusal; Reconsideration.

(a) Whenever an application is refused, or any objection or requirement made by the examiner, the Secretary shall notify the applicant thereof, stating the reasons therefor, together with such information and references as may be useful in judging the propriety of continuing the prosecution of the application; and if after receiving such notice the applicant requests reconsideration, with or without amendment the application shall be reconsidered.

(b) For taking appropriate action after the mailing to him of an action other than allowance, an applicant shall be allowed six months or such other time as the Secretary in exceptional circumstances shall set in the refusal, or such time as he may allow as an extension. Without such extension, action may be taken up to three months late by paying an additional fee to be prescribed by the Secretary.

Sec. 63. Initial Appeal.

When an application for plant variety protection has been refused by the Plant Variety Protection Office, the applicant may appeal to the Secretary. The Secretary shall seek the advice of the Plant Variety Protection Board on all appeals, before deciding the appeal.

Chapter 7.—APPEALS TO COURTS AND OTHER REVIEW

Sec. 71. Appeals.

From the decisions made under sections 44, 63, 91, 92, and 128 appeal may, within sixty days or such further times as the Secretary allows, be taken under the Federal Rules of Appellate Procedure. The Court of Customs and Patent Appeals and United States Courts of Appeals shall have jurisdiction, with venue in the case of the latter as stated in 28 U.S.C. 2343.

28 USC app.

80 Stat. 622.

Sec. 72. Civil Action Against Secretary.

An applicant dissatisfied with a decision under section 63 or 91 of this title, may, as an alternative to appeal, have remedy by civil action against the Secretary in the United States District Court for the District of Columbia. Such action shall be commenced within sixty days after such decision or within such further time as the Secretary allows. The court may, in the case of review of a decision by the Secretary refusing plant variety protection, adjudge that such applicant is entitled to receive a certificate of plant variety protection for his variety as specified in his application as the facts of the case may appear, on compliance with the requirements of this Act.

Sec. 73. Appeal or Civil Action in Contested Cases.

(a) A party to a proceeding under section 92 of this title, dissatisfied with the decision, may take an appeal under section 71 or may have remedy by civil action if commenced within sixty days after such decision or within such further time as the Secretary allows. A party contemplating appeal as provided herein shall notify all adverse parties of his intention and any such adverse party, not the Secretary, shall have the right, by notice served within ten days of the notice to him, to elect that any review shall be by civil action. In such suits the record in the Plant Variety Protection Office shall be admitted on motion of any party upon the terms and conditions as to costs, expenses, and the further cross-examination of witnesses, as the court imposes, without prejudice to the right of the parties to take further testimony. The testimony and exhibits of the record in the Plant Variety Protection Office when admitted shall have the same effect as if originally taken and produced in the suit.

(b) Such suit may be instituted against the party in interest as shown by the record of the Plant Variety Protection Office at the time of the decision complained of, but any party in interest may become a party to the action. If there be adverse parties residing in a plurality of districts not embraced within the same State, or an adverse party residing in a foreign country, the United States District Court for the District of Columbia, or any United States district court to which it may transfer the case, shall have jurisdiction and may issue summons against the adverse parties directed to the marshal of any district in which any adverse party resides. Summons against adverse parties residing in foreign countries may be served by publication or otherwise as the court directs. The Secretary shall not be made a party but he shall have the right to intervene. Judgment of the court in favor of the right of an applicant to plant variety protection shall authorize the Secretary to issue a certificate of plant variety protection on the filing in the Plant Variety Protection Office of a

certified copy of the judgment and on compliance with the requirements of this Act.

Chapter 8.—CERTIFICATES OF PLANT VARIETY PROTECTION

Sec. 81. Plant Variety Protection.

(a) If it appears that a certificate of plant variety protection should be issued on an application, a written notice of allowance shall be given or mailed to the owner. The notice shall specify the sum, constituting the issue fee, which shall be paid within one month thereafter.

(b) Upon timely payment of this sum, and provided that deposit of seed has been made in accordance with section 52(3), the certificate of plant variety protection shall issue.

(c) If any payment required by this section is not timely made, but is submitted with an additional fee prescribed by the Secretary within nine months after the due date or within such further time as the Secretary may allow, it shall be accepted.

Sec. 82. How Issued.

A certificate of plant variety protection shall be issued in the name of the United States of America under the seal of the Plant Variety Protection Office, and shall be signed by the Secretary or have his signature placed thereon, and shall be recorded in the Plant Variety Protection Office.

Sec. 83. Contents and Term of Plant Variety Protection.

(a) Every certificate of plant variety protection shall certify that the breeder (or his successor in interest) his heirs or assignees, has the right, during the term of the plant variety protection, to exclude others from selling the variety, or offering it for sale, or reproducing it, or importing it, or exporting it, or using it in producing (as distinguished from developing) a hybrid or different variety therefrom, to the extent provided by this Act. If the owner so elects, the certificate shall also specify that in the United States, seed of the variety shall be sold by variety name only as a class of certified seed and, if specified, shall also conform to the number of generations designated by the owner. Any rights, or all rights except those elected under the preceding sentence, may be waived; and the certificate shall conform to such waiver. The Secretary may at his discretion permit such election or waiver to be made after certifying and amend the certificate accordingly, without retroactive effect.

(b) The term of plant variety protection shall expire seventeen years from the date of issue of the certificate in the United States. If the certificate is not issued within three years from the effective filing date, the Secretary may shorten the term by the amount of delay in the prosecution of the application attributed by the Secretary to the applicant.

(c) The term of plant variety protection shall also expire if the owner fails to comply with regulations, in force at the time of certifying, relating to replenishing seed in a public repository: *Provided*,

Expiration
date.

however. That this expiration shall not occur unless notice is mailed to the last owner recorded as provided in section 101(d) and he fails, within the time allowed thereafter, not less than three months, to comply with said regulations, paying an additional fee to be prescribed by the Secretary.

Sec. 84. Certificate of Correction of Plant Variety Protection Office Mistake.

Whenever a mistake in a certificate of plant variety protection, incurred through the fault of the Plant Variety Protection Office, is clearly disclosed by the records of the Office, the Secretary may issue a certificate of correction stating the fact and nature of such mistake, under seal, without charge, to be recorded in the records of plant variety protection. A copy thereof shall be attached to each copy of the published specifications or certificate of plant variety protection and such certificate of correction shall be considered as part of the original certificate of plant variety protection. Every such certificate of plant variety protection shall have the same effect as if the same had been originally issued in such corrected form. The Secretary may issue a corrected certificate of plant variety protection without charge in lieu of and with like effect as a certificate of correction.

Sec. 85. Certificate of Correction of Applicant's Mistake.

Whenever a mistake of a clerical or typographical nature, or of minor character, or in the description of the variety, which was not the fault of the Plant Variety Protection Office, appears in a certificate of plant variety protection and a showing has been made that such mistake occurred in good faith, the Secretary may, upon payment of the required fee, issue a certificate of correction in the manner and with attachment of copies as in section 84, if the correction unquestionably could have been made before the certificate issued. Such certificate of plant variety protection shall have the same effect and operation in law on the trial of actions for causes thereafter arising as if the same had been originally issued in such corrected form.

Sec. 86. Correction of Named Breeder.

An error as to the naming of a breeder in the application, without deceptive intent, shall not affect validity of plant variety protection and may be corrected at any time by the Secretary in accordance with regulations established by him or upon order of a federal court before which the matter is called in question. Upon such correction the Secretary shall issue a certificate accordingly. Such correction shall not deprive any person of any rights he otherwise would have had.

Chapter 9.—REEXAMINATION AFTER ISSUE, AND CONTESTED PROCEEDINGS

Sec. 91. Reexamination After Issue.

(a) Any person may, within five years after the issuance of a certificate of plant variety protection, notify the Secretary in writing of facts which may have a bearing on the protectability of the variety, and the Secretary may cause such plant variety protection to be reexamined in the light thereof.

(b) Reexamination of plant variety protection under this section and appeals shall be pursuant to the same procedures and with the same rights as for original examinations. Abandonment of the procedure while subject to a ruling against the retention of the certificate shall result in cancellation of the plant variety certificate thereon and notice

thereof shall be endorsed on copies of the specification of the protected plant variety thereafter distributed by the Plant Variety Protection Office.

(c) If a person acting under subsection (a) makes a prima facie showing of facts needing proof, the Secretary may direct that the reexamination include such interparty proceedings as he shall establish.

Sec. 92. Priority Contest.

(a) If the Secretary determines that two applications of different applicants may be based on the same variety, he may:

- (1) Initiate a priority contest on his own motion whether or not one of the applications may have been certificated; or
- (2) Issue a certificate on the application having the earliest effective filing date, with notice to all; or
- (3) Issue a certificate naming alternative owners, under a single variety name acceptable to both.

(b) On request of any person when a certificate has been issued naming another as an owner or alternative owner, both having applied for protection on the same variety, the Secretary shall institute a priority contest, except that any person shall have forfeited his right to assert priority for the purpose of obtaining plant variety protection when an adverse certificate has issued if he fails to make the request within one year of the mailing of notice specified in part (2) above or if he fails to make the request within the period for taking action after refusal of his application on the basis of the adverse certificate.

Sec. 93. Effect of Adverse Final Judgment or of Non Action.

(a) A final judgment under section 92 adverse to an application from which no appeal or other review had been or can be taken or had shall constitute cancellation of any certificating on that application, and notice thereof shall be endorsed on copies of the specifications of the protected plant variety thereafter distributed by the Plant Variety Protection Office.

(b) Any person who has not proceeded in accordance with the provision of this chapter shall not be foreclosed or in any way prejudiced with respect to the defense of an infringement suit or affirmative relief under declaratory judgment proceedings.

(c) No person subject to an adverse decision in a proceeding under this chapter shall be foreclosed with respect to asserting comparable grounds in defense of an infringement suit or as a basis for affirmative relief under declaratory judgment proceedings.

Sec. 94. Interfering Plant Variety Protection.

The owner of a certificate of plant variety protection may have relief against another owner of a certificate of the same variety by civil action, and the court may adjudge the question of validity of the respective certificates, or the ownership of the certificate. The provisions of section 73(b) of this title shall apply to actions brought under this section.

TITLE III—PLANT VARIETY PROTECTION AND RIGHTS

Chapter	Section
10. Ownership and Assignment.....	101
11. Infringement of Plant Variety Protection.....	111
12. Remedies for Infringement of Plant Variety Protection, and Other Actions	121
13. Intent and Severability.....	131
14. Temporary Provision and Related Enactments; Exempted Plants; Miscellaneous	141

Chapter 10.—OWNERSHIP AND ASSIGNMENT**Sec. 101. Ownership and Assignment.**

(a) Subject to the provisions of this title, plant variety protection shall have the attributes of personal property.

(b) Applications for certificates of plant variety protection, or any interest in a variety, shall be assignable by an instrument in writing. The owner may in like manner license or grant and convey an exclusive right to use of the variety in the whole or any specified part of the United States.

(c) A certificate of acknowledgment under the hand and official seal of a person authorized to administer oaths within the United States, or in a foreign country, of a diplomatic or consular officer of the United States or an officer authorized to administer oaths whose authority is proved by a certificate of a diplomatic or consular officer of the United States, shall be prima facie evidence of the execution of an assignment, grant, license, or conveyance of plant variety protection or application for plant variety protection.

(d) An assignment, grant, conveyance or license shall be void as against any subsequent purchaser or mortgagee for a valuable consideration, without notice, unless it, or an acknowledgment thereof by the person giving such encumbrance that there is such encumbrance, is filed for recording in the Plant Variety Protection Office within one month from its date or at least one month prior to the date of such subsequent purchase or mortgage.

Sec. 102. Ownership During Testing.

An owner who, with notice that release is for testing only, releases possession of seed or other sexually reproducible plant material for testing retains ownership with respect thereto; and any diversion from authorized testing, or any unauthorized retention, of such material by anyone who has knowledge that it is under such notice, or who is chargeable with notice, is prohibited, and violates the property rights of the owner. Anyone receiving the material tagged or labeled with the notice is chargeable with the notice. The owner is entitled to remedy and redress in a civil action hereunder. No remedy available by State or local law is hereby excluded. No such notice shall be used, or if used be effective, when the owner has made identical sexually reproducible plant material available to the public, as by sale thereof.

Chapter 11.—INFRINGEMENT OF PLANT VARIETY PROTECTION**Sec. 111. Infringement of Plant Variety Protection.**

Except as otherwise provided in this title, it shall be an infringement of the rights of the owner of a novel variety to perform without authority, any of the following acts in the United States, or in commerce which can be regulated by Congress or affecting such commerce, prior to expiration of the right to plant variety protection but after either the issue of the certificate or the distribution of a novel plant variety with the notice under section 127:

(1) sell the novel variety, or offer it or expose it for sale, deliver it, ship it, consign it, exchange it, or solicit an offer to buy it, or any other transfer of title or possession of it;

(2) import the novel variety into, or export it from, the United States;

- (3) sexually multiply the novel variety as a step in marketing (for growing purposes) the variety; or
- (4) use the novel variety in producing (as distinguished from developing) a hybrid or different variety therefrom; or
- (5) use seed which had been marked "propagation prohibited" or progeny thereof to propagate the novel variety; or
- (6) dispense the novel variety to another, in a form which can be propagated, without notice as to being a protected variety under which it was received; or
- (7) perform any of the foregoing acts even in instances in which the novel variety is multiplied other than sexually, except in pursuance of a valid United States plant patent; or
- (8) instigate or actively induce performance of any of the foregoing acts.

Sec. 112. Grandfather Clause.

Nothing in this Act shall abridge the right of any person, or his successor in interest, to reproduce or sell a variety developed and produced by such person more than one year prior to the effective filing date of an adverse application for a certificate of plant variety protection.

Sec. 113. Right To Save Seed; Crop Exemption.

Except to the extent that such action may constitute an infringement under subsections (3) and (4) of section 111, it shall not infringe any right hereunder for a person to save seed produced by him from seed obtained, or descended from seed obtained, by authority of the owner of the variety for seeding purposes and use such saved seed in the production of a crop for use on his farm, or for sale as provided in this section: *Provided*, That without regard to the provisions of section 111(3) it shall not infringe any right hereunder for a person, whose primary farming occupation is the growing of crops for sale for other than reproductive purposes, to sell such saved seed to other persons so engaged, for reproductive purposes, provided such sale is in compliance with such State laws governing the sale of seed as may be applicable. A bona fide sale for other than reproductive purposes, made in channels usual for such other purposes, of seed produced on a farm either from seed obtained by authority of the owner for seeding purposes or from seed produced by descent on such farm from seed obtained by authority of the owner for seeding purposes shall not constitute an infringement. A purchaser who diverts seed from such channels to seeding purposes shall be deemed to have notice under section 127 that his actions constitute an infringement.

Sec. 114. Research Exemption.

The use and reproduction of a protected variety for plant breeding or other bona fide research shall not constitute an infringement of the protection provided under this Act.

Sec. 115. Intermediary Exemption.

Transportation or delivery by a carrier in the ordinary course of its business as a carrier, or advertising by a person in the advertising business in the ordinary course of that business, shall not constitute an infringement of the protection provided under this Act.

Chapter 12.—REMEDIES FOR INFRINGEMENT OF PLANT VARIETY PROTECTION, AND OTHER ACTIONS

Sec. 121. Remedy for Infringement of Plant Variety Protection.

An owner shall have remedy by civil action for infringement of his plant variety protection under section 111. If a variety is sold under the name of a variety shown in a certificate, there is a prima facie presumption that it is the same variety.

Sec. 122. Presumption of Validity; Defenses.

(a) Certificates of plant variety protection shall be presumed valid. The burden of establishing invalidity of a plant variety protection shall rest on the party asserting invalidity.

(b) The following shall be defenses in any action charging infringement and shall be pleaded: (1) noninfringement, absence of liability for infringement, or unenforceability; (2) invalidity of the plant variety protection in suit on any ground specified in section 42 of this title as a condition for protectability; (3) invalidity of the plant variety protection in suit for failure to comply with any requirement of section 52; (4) that the asserted infringement was performed under an existing certificate adverse to that asserted and prior to notice of the infringement; and (5) any other fact or act made a defense by this Act.

Sec. 123. Injunction.

The several courts having jurisdiction of cases under this title may grant injunctions in accordance with the principles of equity to prevent the violation of any right hereunder on such terms as the court deems reasonable.

Sec. 124. Damages.

(a) Upon finding an infringement the court shall award damages adequate to compensate for the infringement but in no event less than a reasonable royalty for the use made of the variety by the infringer, together with interest and costs as fixed by the court.

(b) When the damages are not determined by the jury, the court shall determine them. In either event the court may increase the damages up to three times the amount determined.

(c) The court may receive expert testimony as an aid to the determination of damages or of what royalty would be reasonable under the circumstances.

(d) As to infringement prior to, or resulting from a planting prior to, issuance of a certificate for the infringed variety, a court finding the infringer to have established innocent intentions, shall have discretion as to awarding damages.

Sec. 125. Attorney Fees.

The court in exceptional cases may award reasonable attorney fees to the prevailing party.

Sec. 126. Time Limitation on Damages.

(a) No recovery shall be had for that part of any infringement committed more than six years (or known to the owner more than one year) prior to the filing of the complaint or counterclaim for infringement in the action.

(b) In the case of claims against the United States Government for unauthorized use of a protected variety, the period between the date of receipt of written claim for compensation by the department or agency of the Government having authority to settle such claim, and the date of mailing by the Government of a notice to the claimant that his claim has been denied shall not be counted as part of the period referred to in the preceding paragraph.

Sec. 127. Limitation of Damages; Marking and Notice.

Owners may give notice to the public by physically associating with or affixing to the container of seed of a novel variety or by fixing to the novel variety, a label containing the words "Propagation Prohibited" and after the certificate issues, such additional words as "U.S. Protected Variety". In the event the novel variety is distributed by authorization of the owner and is received by the infringer without such marking, no damages shall be recovered against such infringer by the owner in any action for infringement, unless the infringer has actual notice or knowledge that propagation is prohibited or that the variety is a protected variety, in which event damages may be recovered only for infringement occurring after such notice. As to both damages and injunction, a court shall have discretion to be lenient as to disposal of materials acquired in good faith by acts prior to such notice.

Sec. 128. False Marking; Cease and Desist Orders.

(a) Each of the following acts, if performed in connection with the sale, offering for sale, or advertising of sexually reproducible plant material, is prohibited, and the Secretary may, if he determines after an opportunity for hearing that the act is being so performed, issue an order to cease and desist, said order being binding unless appealed under section 71:

(1) Use of the words "U.S. Protected Variety" or any word or number importing that the material is a variety protected under certificate, when it is not.

(2) Use of any wording importing that the material is a variety for which an application for plant variety protection is pending, when it is not.

(3) Use of the phrase "propagation prohibited" or similar phrase without reasonable basis, a statement of this basis being promptly filed with the Secretary if the phrase is used beyond testing and no application has been filed. Any reasonable basis expires one year after the first sale of the variety except as justified thereafter by a pending application or a certificate still in force.

(b) Anyone convicted of violating a binding cease and desist order, or of performing any act prohibited in subsection (a) of this section for the purpose of deceiving the public, shall be fined not more than \$10,000 and not less than \$500.

(c) Anyone whose business is damaged or is likely to be damaged by an act prohibited in subsection (a) of this section, or is subjected to competition in connection with which such act is performed, may have remedy by civil action.

Sec. 129. Nonresident Proprietors; Service and Notice.

Every owner not residing in the United States may file in the Plant Variety Protection Office a written designation stating the name and address of a person residing within the United States on whom may be served process or notice of proceedings affecting the plant variety protection or rights thereunder. If the person designated cannot be found at the address given in the last designation, or if no person has been designated, the United States District Court for the District of Columbia shall have jurisdiction and summons shall be served by publication or otherwise as the court directs. The court shall have the same jurisdiction to take any action respecting the plant variety protection, or rights thereunder that it would have if the owner were personally within the jurisdiction of the court.

Chapter 13.—INTENT AND SEVERABILITY**Sec. 131. Intent.**

It is the intent of Congress to provide the indicated protection for new varieties by exercise of any constitutional power needed for that end, so as to afford adequate encouragement for research, and for marketing when appropriate, to yield for the public the benefits of new varieties. Constitutional clauses 3 and 8 of article I, section 8 are both relied upon.

USC prec.
title 1.

Sec. 132. Severability.

If this Act is held unconstitutional as to some provisions or circumstances, it shall remain in force as to the remaining provisions and other circumstances.

Chapter 14.—TEMPORARY PROVISION AND RELATED ENACTMENTS; EXEMPTED PLANTS; MISCELLANEOUS**Sec. 141. Effective Date.**

This Act shall take effect upon enactment. Applications may be filed with the Secretary and held by him until the Office of Plant Variety Protection is organized and in operation.

Sec. 142. Amendment of Federal Seed Act.

The Federal Seed Act (53 Stat. 1275) is amended as follows:

7 USC 1551.

(a) By adding at the end thereof:

“TITLE V—SALE OF UNCERTIFIED SEED OF PROTECTED VARIETY**“Section 501.**

“(a) It shall be unlawful in the United States or in interstate or foreign commerce to sell by variety name seed not certified by an official seed certifying agency when it is a variety for which a certificate of plant variety protection under the Plant Variety Protection Act specifies sale only as a class of certified seed: *Provided*, That seed from a certified lot may be labeled as to variety name when used in a mixture by, or with the approval of, the owner of the variety.”

(b) By adding at the end of section 102 the following wording: “Seed of a variety for which a certificate of plant variety protection under the Plant Variety Protection Act specifies sale only as a class of certified seed shall be certified only when

Protected
variety, seed
certification,
limitation.
83 Stat. 134.
7 USC 1562.

“(1) the basic seed from which the variety was produced was furnished by authority of the owner of the variety if the certification is made during the term of protection, and

“(2) it conforms to the number of generations designated by the certificate, if the certificate contains such a designation.”.

Sec. 143. Amendment of Judicial Code.

Title 28 of the United States Code, entitled Judicial Code and Judiciary, is amended as follows:

(a) After section 1544 add:

62 Stat. 869.
28 USC 1-2906.
80 Stat. 901.

“Sec. 1545. Decision of the Plant Variety Protection Office.

“The Court of Customs and Patent Appeals shall have nonexclusive jurisdiction of appeals under section 71 of the Plant Variety Protection Act.”

84 STAT. 1559

62 Stat. 931.

(b) In section 1338 after "Patents" in the heading, after "patents" and after "patent" (both occurrences) insert ", plant variety protection".

80 Stat. 624.

(c) After section 2351 add:

"2353. The Court of appeals has nonexclusive jurisdiction to hear appeals under section 71 of the Plant Variety Protection Act."

Actions against
U.S.; Court of
Claims.

62 Stat. 941;

74 Stat. 855.

(d) In section 1498 add the following new subsection:

"(d) Hereafter, whenever a plant variety protected by a certificate of plant variety protection under the laws of the United States shall be infringed by the United States, by a corporation owned or controlled by the United States, or by a contractor, subcontractor, or any person, firm, or corporation acting for the Government and with the authorization and consent of the Government, the exclusive remedy of the owner of such certificate shall be by action against the United States in the Court of Claims for the recovery of his reasonable and entire compensation as damages for such infringement: *Provided*, That a Government employee shall have a right of action against the Government under this subsection except where he was in a position to order, influence, or induce use of the protected plant variety by the Government: *Provided, however*, That this subsection shall not confer a right of action on any certificate owner or any assignee of such owner with respect to any protected plant variety made by a person while in the employment or service of the United States, where such variety was prepared as a part of the official functions of the employee, or in the preparation of which Government time, material, or facilities were used: *And provided further*, That before such action against the United States has been instituted, the appropriate corporation owned or controlled by the United States or the head of the appropriate agency of the Government, as the case may be, is authorized to enter into an agreement with the certificate owner in full settlement and compromise, for the damages accrued to him by reason of such infringement and to settle the claim administratively out of available appropriations."

Sec. 144. Exempted Plants.

The provisions of this Act shall not apply to the seeds, plants, or transplants of okra, celery, peppers, tomatoes, carrots, and cucumbers.

Sec. 145. Short Title.

This Act may be cited as the "Plant Variety Protection Act".

Approved December 24, 1970.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 91-1605 (Comm. on Agriculture).

SENATE REPORTS: No. 91-1138 (Comm. on Agriculture and Forestry) and No. 91-1246 (Comm. on the Judiciary).

CONGRESSIONAL RECORD, Vol. 116 (1970):

Oct. 2, considered and passed Senate.

Dec. 8, considered and passed House, amended.

Dec. 9, Senate concurred in House amendments.

